

INCOME-TAX LAW AND PRACTICE IN INDIA

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KNOWLEDGE HOME

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First Edition :

In view of the excellent works on this subject of income-tax already in the market, some explanation of the special features claimed for the present work may not be out of place. It seeks to fulfil the double function of a Text Book suitable for the students preparing for the Professional Examinations and a useful work of reference to those whose duties include the advising of tax-payers on the many and varied problems which arise under our Income-tax Laws. The use of practical illustrations showing the working and effect of all the principles and the inclusion of subsidiary Provisions and Rules are the essential features of the book. With the particular needs of the students, forty examples have been included on the assumption that they have no previous knowledge of the subject whatsoever. Names, addresses and particulars given in the illustrations are all fictitious and used for illustrative purpose only.

In writing the book I have consulted many authoritative publications on the subject with special reference to the Income-tax Manual, the Law of Income-tax in India by V. S. Sundaram, the Indian Income-tax Act, 1922 by A. N. Aiyar indebtedness to the authors and publishers of them. I have also consulted my numerous friends to whom I offer my sincere thanks. Lastly, I thank my assistant Mr. P. K. Mitter, B. A. for going through the proofs.

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A. G. Banerjee

Income-Tax Law and Practice In India

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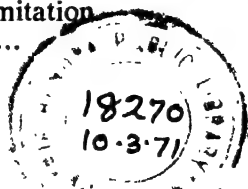
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PART I
INCOME-TAX LAW
AND
PRACTICE IN INDIA

Abbreviation, I. T. R.Income-Tax Reports.

CHAPTER I

THE INCOME-TAX LAW AND ITS ADMINISTRATION

§ 1. **The Evolution of Income-tax Law & Practice**—Income-tax was introduced in India in 1860. But instead of an indigenous model adopted to local circumstances, the Government unfortunately followed the law which was in force in England. Direct taxation in India thus started on a wrong basis from which it could not easily recover. Possibly with time and care a great improvement could have been effected had the law remained unaltered. But unluckily it was utilised as a convenient means of balancing budget inequalities and a great reserve in every financial or national emergency. In addition to the changes in rate and incidence, changes in name, form, classification and procedure were followed with one object or another and 23 Acts on the subject were passed between 1860 and 1886.

The Act of 1886 worked smoothly so long as the rate of tax was low. Slight inequalities in assessment were neither object to by the Government nor by the tax-payer. The war necessitated increased taxation and income-tax had to make up its shares. The system of assessment was radically changed owing to the increase in rates coupled with steeper graduation in 1916 and again in 1918. Within a few years, the new Act showed that it should also be substantially revised and the Government of India appointed Committees in each Province to examine and recommend necessary alterations. An All-India Committee was appointed in 1921 and the Act of 1922 was based on the recommendations of this Committee. This Act was made a mere act of machinery and procedure, leaving the actual charge of tax to be made by the Annual Finance Acts. After passing several amendments to this Act, the Government appointed an Expert Committee in 1935 to investigate the Law in all its aspects and to report upon both the incidence of tax and the efficiency of its administration. The Committee made an extensive tour throughout India, during which a detailed examination of the organisation and work of the Department were carried out as also the representations of the various Chambers of Commerce and other public bodies were considered.

The Law, which was radically changed in 1939 on the recommendations of the 1935 Committee, for the first time imposed taxation in respect of foreign income on accrual basis under certain circumstances in the hands of certain categories of tax-payers classified on the basis of their physical presence in India. The rates of income-tax were changed from "step system" to "slab system" by which successive slices of total income were charged at progressively higher rates. The rates imposed in 1939 were subsequent increased year after year for raising additional revenue to meet the ever-increasing defence expenditure for the World War II (1939-45). During 1939 to 1959 the Act was amended 23 times and each of these amendments was of considerable importance. Consequently, the Act required revision with a view to simplification. On the basis of the reports of the Law Commission and Direct Taxes Enquiry Committee, the Law was consolidated and codified as Income-tax Act, 1961. It came into force with effect from the 1st April, 1962.

The Income-tax Law being a complicated subject, circumstances arise from time to time when the strict application of the Act is either impossible or inconvenient or grossly unfair and inequitable. As a result, practice has arisen of dealing with the position in a way not strictly authorised by the Act, but just and convenient in effect. Such practice has been acknowledged

not only by the Revenue Authorities, but also by the Legislature. The taxpayer is not bound to comply with these extra-legal practices, where it is not to his advantage, and as a matter of fact, they mostly operate in the assessee's favour for that very reason. Instances will be referred to in later chapters where practices have arisen, which are of wide importance.

§ 2. **Scope of the Act (Sections 1 and 5)**—The Act applies to an income which accrues or arises within the country (irrespective of the places of its receipt) as also to an income which is received within the country (irrespective of the place of accrual), the status, nationality or residence of the recipient being immaterial. The Act further applies to an income which accrues, arises or is received outside the country provided the recipient is "Resident and Ordinarily Resident" of the country. The application, however, has primary reference to the liability to tax and, as such, the Act can be enforced only when the liability is determinable.

The law does not define what is "income" though it sets out certain provisions as to the particular kind of receipts which should be excluded or not in the computation of income. Consequently, we have to seek guidance from judicial pronouncements as to the nature of income liable to be taxed. It was defined by Dawson Miller, C. J. in *re : Raja Jyotiprosad Sing Deo* as follows :

"Without giving an exhaustive definition it may be described as the annual or periodical yield in money or reducible to money value arising from the use of real or personal property or from labour or services rendered bearing in mind that in some cases e.g., income derived from house property, the yield must be taken as bonafide annual value and not necessarily as the actual yield."

According to the decision of the Privy Council in *Commissioner of Income-tax, Bengal Vs. Shaw Wallace & Co.*, "Income" connotes a periodical monetary return "coming in" with some sort of regularity from definite sources which need not be continuously productive, but their object must be the production of a definite return as distinguished from a mere windfall.

Voluntary and gratuitous payments, which are connected with the office, profession, vocation or occupation may constitute "income" although if the payments were not made the enforcement thereof cannot be insisted upon. These payments constitute "income" because they are referable to a definite source, which is the office, profession, vocation or occupation.... Where, however, a voluntary payment is made entirely without consideration and is not traceable to any source which a practical man may regard as a real source of his income, but depends entirely on the whim of the doner, the payment cannot fall in the category of "income". [I. T. R. Vol. 49 (1963), page 605]. [Bombay High Court decision].

Income-tax is a levy on income. Though the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt, yet the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping an entry is made about a "hypothetical income" which does not materialise. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously

neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account. [I. T. R., Vol. 46 (1962), page 144] [Supreme Court decision]

Under the Income-tax Act the State has no power to tax a "potential future advantage". For income-tax purposes each year is self-contained accounting period and the Income-tax Authorities can only take into consideration income, profits and gains made in that year. [I. T. R., Vol. 24 (1953), page 506] [Supreme Court decision]

If the profits of a trade, even though it may be illegal, are liable to be taxed under the taxing statute, the computation of the profits will have to be done in accordance with the mode prescribed by the Statute. The circumstances that the business is illegal, so that neither the profits earned nor the losses suffered would be enforceable in law, is not a circumstance which detracts from the profits being taxed. Equally so should it not be a circumstance which could detract from the loss being allowed. Even in computing the profits of an illegal business the expenses incurred in the running of the business, such as, for instance, the salaries to the employees or the rent paid for the premises occupied for the purpose of the business, would be certainly allowed in computing the profits of the business, although such amounts, if they are not paid, could not be recovered in a court of law. [I. T. R., Vol. 49 (1963), page 931] [Bombay High Court decision].

Contributions made by an employer to provide pensionary or deferred annuity benefits to an employee cannot be taxed in the hands of the employee unless a vested interest therein accrues to the employee in the accounting year. Until an employee attained the age of super-annuation he did not acquire any vested right in the employer's share of contributions towards the pension or the annuity, at best he had a contingent right therein in the earlier years. The taxability can be applied only to such sums in regard to which there was an obligation on the part of the employer to pay and simultaneously a vested right on the part of the employee to claim it could not apply to contingent payments to which the employee had no right till the contingency occurred. [I. T. R. Vol. 53 (1964), Page 91] [Supreme Court decision].

Income-tax is a tax on the real income i.e., in the case of a business, the profits arrived at on commercial principles subject to the provisions of the Income-tax Act. There is a clear-cut distinction between deductions made for ascertaining the profits and distributions made out of profits. There is a further distinction between real profits ascertained on commercial principles and profits fixed by Statute for a specified purpose. Under Indian Income-tax Act, 1922, profits and gains of a business carried on by an assessee are not profits regulated by any Statute, but profits in a business computed on commercial principles. They are business profits and not "Statutory Profits". [I. T. R., Vol. 57 (1965), page 521] [Supreme Court decision]

Income-tax is, therefore, as its name implies, a tax on income, irrespective of the standard by which it is measured. The moment the amount of income is determined, it attracts liability and the law is not concerned how it is ultimately disposed of. It is, however, a personal tax and is not a charge on the income upon which it is levied, but is imposed upon a person in relation to his income.

An obligation to apply the income in a particular way before it is received by the assessee or before it has accrued or arisen to the assessee results in the diversion of income. An obligation to apply income which has accrued or arisen

or has been received amounts merely to the apportionment of income and the income so applied is not deductible. The true test for the application of the rule of diversion of income by an overriding title is whether the amount sought to be deducted in truth never reached the assessee as his income. [I. T. R. Vol 74 (1969) page 19] [Supreme Court decision].

The word "accrue" connotes the idea of accumulation of income on *de die in diem* basis, whereas the word "arise" connotes the idea of the growth of income with a tangible shape of its receivability. To illustrate, when a loan is issued by the Government on tap i.e., the purchase price of the loan payable by a subscriber is increased by certain per cent per week representing the interest payable from the last date of payment of interest, say the 15th March, to the date of purchase, say the 15th May, this weekly increase is nothing but interest "accrued" over the period. The interest would, of course, "arise" on the date the interest becomes payable by the Reserve Bank of India, say the 15th September, since on this date the security-holder acquires the legal right to receive the interest. If the interest is drawn on a subsequent date, say the 25th September, then it can be said that the interest has been received on that date. In short, the above explains the difference between the words "accrue", "arise" or "is received".

The Law, however, for the first time in 1947-48, imposed taxation on "Capital Gains". After being abolished in 1949-50, it was re-imposed in 1957-58 on profits and gains arising out of sale, exchange, relinquishment or transfer of a capital asset after the 31st March, 1956. (See Chapter XI)

§ 3. Administration [Section 116] :

(a) **Inspectors of Income-tax**—Administratively, they assist Income-tax Officers in making correct assessments. The Inspectors usually make outdoor survey for the purpose of discovering new assesseees. They examine assesseees' books of account on the spot for tapping new sources of income, if any, of the existing assesseees. Finally, they assist the Income-tax Officers in the examination of the books of account produced by the assesseees.

(b) **Income-tax Officers**—The administration of the Law is vested primarily in the hands of the Income-tax Officers who are appointed to issue notice, examine evidence and assess income. The Income-tax Officers are assisted by Inspectors and clerks who are appointed to perform various clerical and other duties preliminary to or consequent upon their orders.

While the Income-tax Officers are normally appointed in relation to an area, there are certain classes of assesseees whose assessments are made by an All-India Staff. The cases of the Officers of the Military and other Departments of the Government of India who are liable to be transferred from one State to another and that of some Railway, Insurance or Banking Companies are dealt with by Special Officers for the whole of India.

(c) **Inspecting Assistant Commissioners**—Administratively, the Income-tax Officers are under the control of Inspecting Assistant Commissioners who are in their turn responsible to the Commissioners for seeing that the work in the circles under their control are efficiently performed. They not only examine the technical accuracy of the assessments, but also deal with the general organisation of the office, the control of the Office Staff, settlement of refund claims in reasonable time and the extent to which the convenience of the public is considered in arranging for interviews and calling for books of account etc.

Though their functions are mainly extra-statutory, still a penalty exceeding Rs. 1,000 cannot be imposed by the Income-tax Officers without their previous approval.

(d) **Commissioners**—The head of the Income-tax Department of a State or other Area entrusted to him is the Commissioner of Income-tax who is appointed by the Central Government. He is vested with powers under Sections 263 and 264 to revise any order passed by any Income-tax official subordinate to him. In addition, Special Commissioners are appointed without reference to any Area to secure proper and uniform administration of the Income-tax Act throughout India and to detect cases of suspected fraud.

(e) **Directors of Inspection**—Administratively, they are under the control of the Central Board of Direct Taxes. Though specific powers and functions of the Directors of Inspection have not been defined, they normally collect and collate information from different departments of the Government and then distribute them to proper Income-tax Officers for necessary action.

(f) **Central Board of Direct Taxes**—The Board is entrusted with the general administration of the Act by issuing executive instructions regarding the interpretation of the provisions of the Act. It is also, authorised to make rules under Section 255 for carrying out the purposes of the Act. The Board has the over-riding power to issue directions and instructions to all Officers of the Department except the Appellate Assistant Commissioners in the exercise of their appellate functions.

(g) **Appellate Assistant Commissioners**—The functions of Appellate Assistant Commissioners are mainly to hear appeals against assessments made by the Income-tax Officers. Administratively they are directly under the control of the Central Board of Direct Taxes.

(h) **Appellate Tribunal**—The functions of the Appellate Tribunals are to hear appeals on questions of fact and law against the decisions of the Appellate Assistant Commissioners. The Tribunal's decisions on questions of fact are final and conclusive, but its decisions on questions of law are subject to reference to a High Court. The Tribunal is now the only authority to state a case for the opinion of High Court. The appeals are ordinarily heard by a Bench consisting of a Judicial Member and an Accountant Member having experience of accountancy and business matters.

The Appellate Tribunal is a fact-finding body and if it arrives at its own conclusion of fact after due consideration of the evidence placed before it, the higher courts will not interfere. It is necessary, however, that every fact for and against the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would clearly indicate what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them and what were the findings reached on the evidence on record before it. The conclusion reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which require to be explained by the assessee, he should be given an opportunity of doing so. On no account whatever, should the Tribunal base its findings on suspicions, conjectures or surmises and if it does anything of the sort, its findings even though on fact will be liable to be set aside by a higher court. [I. T. R., Vol. 37 (1959), page 151] [Supreme Court decision]

The function of the Appellate Tribunal in hearing an appeal is purely judi-

cial. It is under a duty to decide all questions of fact and law raised in the appeal before it : for that purpose it must consider whether on the materials relied upon by the assessee his plea is made out. Conclusive proof of the claim is not predicated : the Tribunal may act upon probabilities, and presumptions may supply gaps in the evidence which may not, on account of delay or the nature of the transactions or for other reasons, be supplied from independent sources. But the Tribunal cannot make arbitrary decisions : it cannot find its judgment on conjectures, surmises or speculation. Between the claims of the public revenue and of the tax-payers, the Tribunal must maintain a judicial balance. An order passed by the Tribunal without recording any reason in support of its estimates of unaccounted income cannot therefore be sustained. [I. T. R., Vol. 66 (1967), page 478] [Supreme Court decision].

CHAPTER II

NOTIONAL INCOME

§ 1. **“Deemed” Income**--In addition to actual incomes, certain categories of receipts are treated as “deemed incomes” for income-tax purposes only. The deeming may be in relation to (1) a person, (2) a place, (3) a period, and (4) a source. Rent realised from a house owned by a married woman would be deemed to be the income of her husband, if the house was transferred by the husband to his wife. The “deeming” in this case is in relation to a “person”. A loan was taken in New York and the money was utilised for buying a new machine for installation in Bombay. The interest payable in New York on such loan in terms of the agreement would be deemed to accrue in India and as such liable to Indian income-tax. The “deeming” in this case is in relation to a “place”. A dividend was declared in an annual general meeting held on the 11th April, 1965 out of the profits for the year ended on the 31st December, 1963. This dividend would be deemed to arise on the 11th April, 1965 although it was payable out of the profits arising in an earlier year. The “deeming” in this case is in relation to a “period”. Lastly, certain receipts which are of “capital nature” would be deemed to be income liable to income-tax. The examples of such “deemed incomes” are distribution of dividends out of accumulated profits in the shape of debentures, compensation for loss of agency, cessation of trading liabilities, unexplained investments or cash introduced into business and capital gains arising out of sale, exchange or transfer of capital asset. The “deeming” in these cases are in relation to a “source”. [Section 2 (24)]

§ 2. **Income deemed to accrue in India (Section 9)**—There are two different lines of approach regarding the concept of the place where an income accrues. One emphasises the place where the income springs or grows, while the other regards the place where the result of the business activities culminate into money or money's worth. If the business consists merely of buying or selling commodities, then the income accrues at the place the goods are sold and proceeds are realised. But the same test does not hold good where the business consists of different stages of production and sale. It is, therefore, quite logical that in the case of business in which the manufacturing process is carried on in one country and the sale of the finished products is effected in another, the income of the business should be apportioned and only that portion of the income which is reasonably attributable to the operations carried out in India should be deemed to accrue in India.

Section 9 of the Act deals with five specific types of income deemed to accrue in India if they arise directly or indirectly,

- (1) through or from any business connection in India, or
- (2) through or from any property in India, or
- (3) through or from any asset or source of income in India, or
- (4) through or from any money lent at interest and brought into India in cash or in kind, or
- (5) through the transfer of a capital asset in India.

The expression "business connection" denotes some element of continuity in the relationship between the agent, licensee or other person resident in India who enables the non-resident principal to earn the income. The term "property" covers all movable and immovable assets. The expression "any asset or source of income" includes royalty, brokerage, commission etc., which in a primary sense arise from Indian sources. The expression "money lent at interest and brought into India in cash or kind" indicates that the contract of loan takes place outside India and the borrower thereafter brings the money inside India. Interest payable on the loan would be deemed to accrue in India. But when the money lent by a non-resident outside India has been mixed upon with other moneys of similar nature and thereafter brought into India by the borrower, the interest payable on such loan cannot be deemed to accrue in India inasmuch as the moneys had lost their identity and the lenders had no knowledge that their money would be brought into India.

"Salary" will be deemed to accrue in India if it is earned in respect of services rendered inside India irrespective of the place of its payment. "Salary" payable by the Government to an Indian citizen even in respect of services rendered outside India will be deemed to accrue in India irrespective of the place of its payment. In addition, dividend paid outside India by an Indian Company formed and registered under the Companies Act, 1956, will be deemed to accrue in India.

CENTRAL BOARD OF DIRECT TAXES, CIRCULAR NO. 23 OF 1969.

Subject § Non-residents—Income accruing or arising through or from business connection in India—Liability to tax—Section 9 of the Income-tax Act, 1961.

Para—1. Section 9 of Income-tax Act (corresponding broadly to Section 42 of the Indian Income-tax Act, 1922) provides, inter alia that income accruing or arising directly or indirectly, through or from any business connection in India, shall be deemed to be income accruing or arising in India and hence, where the person entitled to such income is a non-resident it will be includible in his total income. Clarifications issued in the past by the Board on the scope of the provisions of Section 42 and their applicability in certain types of cases, are hereby consolidated and restated for the information and convenience of the public.

Para—2. The expression 'business connection' admits of no precise definition. The import and connotation of this expression has been explained by the Supreme Court in their judgment in *C. I. T. VS. R. D. Aggarwal & Co. and Another* [I. T. R. Vol 56 (1965) Page 20]. The question whether a non-resident has a 'business connection' in India from or through which income profits or gains can be said to accrue or arise to him within the meaning of Section 9 of the Income-tax Act, 1961, has to be determined on the facts of each case. However, some illustrative instances of a non-resident having business connection in India, are given below :

(a) Maintaining a branch office in India for the purchase or sale of goods or transacting other business ; (b) Appointing an agent in India for the systematic and regular purchase of raw materials or other commo-

dities, or for sale of the non-resident's goods, or for other business purposes ; (c) Erecting a factory in India where the raw produce purchased locally is worked into a form suitable for export abroad ; (d) Forming a local subsidiary company to sell the products of the non-resident parent company ; (e) Having financial association between a resident and a non-resident company.

Para—3. The following clarifications would be found useful in deciding questions regarding the applicability of the provisions of Section 9 in certain specific situations :—

(1) Non-resident exporter selling goods from abroad to Indian Importer :

(i) No liability will arise on accrual basis to the non-resident on the profits made by him where the transactions of sale between the two parties, are on a principal-to-principal basis. In all cases, the real relationship between the parties has to be looked into on the basis, and agreement existing between them, but where—

(a) the purchases made by the resident are outright on his own account,

(b) the transactions between the resident and the non-resident are made at arm's length and at prices which would be normally chargeable to other customers,

(c) the non-resident exercises no control over the business of the resident and sales are made by the latter on his own account, or

(d) the payment of the non-resident is made on delivery of documents and is not dependent in any way on the sales to be effected by the resident, it can be inferred that the transactions are on the basis of principal-to-principal.

(ii) A question may arise in the above type of cases whether there is any liability of the non-resident under Section 5(1) (a) of the Income-tax Act, 1961, on the basis of receipt of sale proceeds including the profit in India. If the non-resident makes over the shipping documents to a bank in his own country which discounts the documents and sends them for collection to the bankers in India, who present the sight or usance draft to the resident importer and deliver the documents to him against payment or acceptance by the latter, the non-resident will not be liable to tax on the profit arising out of the sales on receipt basis. Even if the shipping documents are not discounted in the foreign country, but are handed over in India against payment or acceptance, no portion of the profits will be chargeable to tax under the Income-tax Act, if this is the only operation carried on in India on behalf of the non-resident.

(2) Non-resident company selling goods from abroad to its Indian subsidiary :

(i) A question may arise whether the dealings between a non-resident parent company and its Indian subsidiary can at all be regarded as on a principal-to-principal basis since the former would be in a position to exercise control over the affairs of the latter. In such a case, if the transactions are actually on a principal-to-principal basis and are at arm's length and the subsidiary company functions and carries on business on its own, instead of functioning as an agent of the parent company, the mere fact

that the Indian company is a subsidiary of the non-resident company will not be considered a valid ground for invoking Section 9 for assessing the non-resident.

(ii) Where a non-resident parent company sells goods to its Indian subsidiary, the income from the transaction will not be deemed to accrue or arise in India under Section 9, provided that (a) the contracts to sell are made outside India, (b) the sales are made on a principal-to-principal basis and at arm's length and (c) the subsidiary does not act as an agent of the parent. The mere existence of a "business connection" arising out of the parent subsidiary relationship will not give rise to an assessment, nor will the fact that the parent company might exercise control over the affairs of the subsidiary.

(3) Sale of plant and machinery to an Indian importer on instalment basis :

Where the transaction of sale and purchase is on a principal-to-principal basis and the exporter and the importer have no other business connection, the fact that the exporter allows the importer to pay for the plant and machinery in instalments will not, by itself render the exporter liable to tax on the ground that the income is deemed to arise to him in India. The Indian importer will not, in such a case, be treated as an agent of the exporter for the purposes of assessment.

(4) Foreign agents of Indian exporters :

A foreign agent of Indian exporter operates in his own country and no part of his income arises in India. His commission is usually remitted directly to him and is, therefore, not received by him or on his behalf in India. Such an agent is not liable to income-tax in India on the commission.

(5) Non-resident person purchasing goods in India :

A non-resident will not be liable to tax in India on any income attributable to operations confined to purchase of goods in India for export, even though the non-resident has an office or an agency in India for this purpose. Where a resident person acts in the ordinary course of his business in making purchases for a non-resident party, he would not normally be regarded as an agent of the non-resident under Section 163 of the Act. But, where the resident person is closely connected with the non-resident purchaser and the course of business between them is so arranged that the resident person gets no profits or less than the ordinary profits which might be expected to arise in that business, the Income-tax Officer is empowered to determine the amount of profits which may reasonably be deemed to have been derived by the resident person from that business and include such amount in the total income of the resident person.

(6) Sales by a non-resident to Indian customers either directly or through agents :

(i) Where a non-resident allows an Indian customer, facilities of extended credit for payment, there would be no assessment merely for this reason provided that (a) the contracts to sell were made outside India and (b) the sales were made on a principal-to-principal basis.

(ii) Where a non-resident has an agent in India and makes sales directly to Indian customers, Section 9 of the Act will not be invoked, even if the resident pays his agent an overriding commission on all sales to India, provided that (a) the agent neither performs or undertakes to perform any service directly or indirectly in respect of these direct sales and the making of these sales can, in no way, be attributed to the existence of the agency or to any trading advantage or benefit accruing to the principal from the agency, (b) the contracts to sell are made outside India, and (c) the sales are made on a principal-to-principal basis.

(iii) Where a non-resident's sales to Indian customers are secured through the services of an agent in India, the assessment in India of the income arising out of the transaction will be limited to the amount of profit which is attributable to the agent's services, provided that (a) the non-resident principal's business activities in India are wholly channelled through his agent, (b) the contracts to sell are made outside India and (c) the sales are made on a principal-to-principal basis. In the assessment of the amount of profits allowance will be made for the expenses incurred, including the agent's commission, in making the sales. If the agent's commission fully represents the value of the profit attributable to his service it should *prima facie* extinguish the assessment.

(iv) Where a non-resident principal's business activities in India are not wholly channelled through his agent in India, the assessment in India will be on the sum-total of the amount of profit attributable to his agent's activities in India and the amount of profit attributable to his own activities in India, less the expenses incurred in making the sales.

(7) Extent of the profit assessable under Section 9 :

Section 9 does not seek to bring into the tax-net the profit of a non-resident which cannot reasonably be attributed to operations carried out in India. Even if there be a business connection in India, the whole of the profit accruing or arising from the business connection is not deemed to accrue or arise in India. It is only that portion of the profit which can reasonably be attributed to the operations of the business carried out in India, which is liable to income-tax.

To constitute a business connection some continuity of relationship between the person in India who helps to make the profits and the person outside India who receives or realises the profits, is necessary. Where all that has happened is that a few transactions of purchases of raw materials have taken place in India and the manufacture and sale of goods have taken place outside India, the profits arising from such sales cannot be considered to have arisen out of a business connection in India. Where, however, there is a regular agency established in India for the purchases of the entire raw materials required for the purpose of manufacture and sale abroad and the agent is chosen by reason of his skill, reputation and experience in the line of trade, it can be said that there is a business connection in India so that a portion of the profits attributable to the purchase of raw materials in India can be apportioned under the explanation (a) to Section 9(1)(i).

§ 3. Income "deemed" to be received [Section 7]—Contributions made by an employer in excess of 10% of the salary of any employee participating in a recognised provident fund and interest credited on the balance to the credit

of the employee in excess of one-third of his salary or at a rate in excess of 6% will be deemed to have been received by the employee and as such liable to tax.

When an existing provident fund is recognised the transferred balance consisting of the employer's contribution in excess of 10% of the employee's salary and interest credited in excess of one-third of his salary or at a rate in excess of 6% during the period the fund was unrecognised, will be deemed to have been received by the employee in the year of recognition and as such liable to tax.

In addition, income-tax deducted at source during a year from salary, interest on securities and dividends will be deemed to have been received by the recipient and will be included in his total income for that year.

CHAPTER III

INCOME EXCLUDED FROM TOTAL INCOME

Incomes of certain categories are treated as "No Income", as such they are not taken into account in computing the total amount of income liable to income-tax. The main heads of exempted income are now considered.

§ 1. Commutation of pension, Consolidated Compensation for death or injuries etc. :

Any sum received on account of commutation of pension [Section 10 (10A)] or in the nature of consolidated compensation for death or injuries or in payment of an insurance policy or as the accumulated balance standing at the credit of a subscriber to any provident fund is treated as a Capital receipt, as such it is not taxable. Payment out of provident funds or similar funds which are not recognised in terms of the Act are, however, taxable to the extent of the employer's contribution and interest thereon. Moneys received under policies insuring against loss of profit are, however, not exempt.

§ 2. Income of Religious & Charitable Institution (Sections 11 to 13) :

Income from property held under Trust for religious or charitable purpose and from business carried on by or for a charitable institution, including voluntary contributions received by it, is exempt from taxation. The word "property" does not bear the restricted meaning that it bears in Section 22 of the Act, but includes securities, business, or share in a business. In the case of a property in which there is no absolute dedication and in which the trust reserves a secular interest to beneficiaries, Shebait or heirs of the founder, etc., the secular interest is assessable to tax.

The maintenance of a Shebait may or may not come within the category of religious or charitable purpose. It depends on the circumstances of the case. If, for instance, dedication is absolute and a small portion of the income is given to the Shebait for his remuneration for carrying out the terms of the endowment, it would not be secular. If, on the other hand, a fixed sum is given to the Shebait for his maintenance, the residue would be held to be secular. The test is whether a suit for partition lies for division of the residue. In any case, any portion of the income dedicated under the Trust which may be misappropriated would also be assessable.

To secure exemption, the entire income of religious or charitable institutions or the income derived from property held for religious or charitable purposes need not be spent for those purposes in the year of receipt. The accumulation is allowed upto 25% of the income or Rs. 10,000 whichever is higher. Business income of a charitable or religious trust is exempt when the income is applied solely for the purposes of the institution or the business is carried on mainly by the beneficiaries of the institution.

Income of a religious or charitable institution, derived from voluntary contributions like donations, legacies and gifts, is also exempt if it is applicable to religious or charitable purpose which includes relief of the poor, education, medical relief and advancement of any other object of general public utility not involving the carrying on of any activity of profit. The expression "charitable purpose" should ordinarily apply to public charities.

To eliminate the potentialities of fraud by creating revocable charitable trust, the exemption is connected with the provisions of Sections 60 to 63 of the Act (under which income from a revocable trust is to be included in the income of the settler).

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§ 3. Agricultural Income [Section 10 (1)] Any rent or revenue derived from land used for agricultural purposes is exempt from tax only when the land is assessed to land revenue by an Authority in India or is subject to a local rate assessed and collected by an Authority in India. But where the land revenue or local rate is paid to an Authority outside India, the exemption does not apply.

Rent, revenue or income derived from land by agricultural operation, refer to the rent, revenue or income earned by a person having some interest in the land. It is only in the hands of the owner, landlord, ryot or persons having a derivative interest in the land, that the income can be treated as agricultural income. It does not, therefore, accrue to every person into whose hands the produce of the land passes.

Profit accruing from the purchase of a standing crop and resale of it after harvest by a merchant, having no interest in the land except permission to enter upon the land for plucking the produce, differs materially in its character from income derived by way of rent or revenue by a person having an interest therein as owner, tenant or mortgagee with possession, etc. The profit in such a case is derived by entering into a contract of purchase of a commodity and by resale of it at a higher price and, consequently, is not agricultural income. The land is not the direct or immediate or effective source of income—the immediate and effective source being the trading operation of purchase of the standing crop and its resale in the market after harvesting the produce at a higher price.

Income from fisheries, markets, moorings, ferries, stone quarries, coal, manganese, mica, etc., is not agricultural income. Income from the use of land for storing purchases of crops by merchants and from land let out for making bricks is not agricultural income. Nazar paid by tenants at the beginning of the Zemindary year known as Punnyaha Nazar, a voluntary payment on the auspicious day, and Nazar paid for the recognition of succession, inheritance, etc., not in connection with the land or tenure held by the tenant, are not agricultural income. Interest on cash loans made to tenants at the beginning of the cultivating season, repayable in kinds at harvest time, is not agricultural income.

Income from sale of catechu, Kah-charai (dues paid for grazing wild grass), Narkul Jalkar (reeds growing on banks of rivers), forest timber, grass phus (thatching straw) and bhang and fruits of mango, imli (tamarind) and kathal (jack fruit) trees which have grown on land naturally and spontaneously and without the intervention of human agency is not agricultural income even if such land is assessed to land revenue, and such income is not exempt from income-tax.

In order to decide whether the income derived by an assessee from the sale of forest trees is agricultural income or not, the crucial question to be answered is whether those trees were planted by the assessee or did those trees grow spontaneously. If those trees had grown spontaneously, then income derived from the sale of those trees is not agricultural income. In such a case, it is wholly immaterial that the assessee has maintained a large establishment for the maintenance and preservation of the forest and assisting in the growth

of the trees and has performed operations of substantial character for the maintenance and improvement of the forest; because *ex hypothesi*, he has performed no basic operations for bringing the forest into being. Merely because considerable amounts have been expended by the assessee in the maintenance of the forest, it will not be held that the trees were planted by the assessee. [I. T. R., Vol. 35 (1959), page 312] [Supreme Court decision].

Weighing charges levied by a landlord on his tenants in addition to the rent under agreements entered into with the tenants and cess collected from tenure-holders and ryots under Bengal Cess Act 1880, are agricultural income and exempt from tax. Income derived from pasturage is income from land used for agricultural purposes and is therefore, exempt. Profit derived from sale of tobacco leaves by a Biri Manufacturer is not agricultural income, but profit derived from cultivation of tendu leaves is agricultural income and exempt. Income derived from "toddy" is agricultural income in the hands of the actual cultivator, whether owner or lessee of the land on which the tree is grown. Profits derived by a cultivator from the sale of the produce raised by him are exempt even if he keeps a shop for the sale of such produce, provided no process has been performed in respect of the produce other than those ordinarily employed by cultivators to render the produce fit to be taken to market.

✓§ 4. Allowance received by member of a Hindu undivided family [Section 10 (2)] : Income received by a person under any customary or legal right from the funds belonging to a Hindu undivided family as one of its members, is exempt from tax in his hands. The income is, however, assessable in the hands of the family as a separate composite unit. Those members of a Hindu undivided family, who either on partition would be entitled to demand share or are entitled to maintenance under Hindu Law can only claim exemption from taxation. (Also see Chapter VI. § 2)

§ 5. Casual and non-recurring income [Section 10 (3)] : Revenue receipts which are casual and non-recurring and do not arise from any venture or concern in the nature of trade, commerce or manufacture are exempt from taxation. Receipts may be isolated and yet may not be of a casual and non-recurring nature, as such these should be scrutinised before being taxed. Some illustrations are given below :

(i) A purchases a house with a view to re-selling it at a profit. His profit from this transaction is liable to tax even though it is an isolated transaction. B purchases a house for his own use and later on sells it at a profit. His profit is not liable to tax.

(ii) A wins a prize in a lottery of a bet on the race-course; his receipts therefrom are not taxable. B is a book-maker, as such his profits from betting is taxable.

(iii) A makes a practice of speculating in the purchase and sale of shares; his profit therefrom is liable to tax. B purchases a debenture at Rs. 95 redeemable at par after ten years. The premium received on redemption is not taxable. On the other hand, the yield from Treasury Bill issued at a discount and redeemed at par after three or six months is liable to tax.

(iv) Lump sum legacies are exempt from tax, but annuities granted under a Will are not exempted.

(v) A fee for referring a football match would be taxable in the hands of professional referee, but not in the hands of an amateur.

(vi) Fees for giving evidence would be taxable in the hands of an expert, but not in the hands of a casual spectator.

(vii) Fees for casual journalistic efforts are not taxable, but fees for setting examination papers in his own subject paid to a Professor are taxable.

§ 6. Interest on Bonds, Securities and Deposit Certificates [Section 10 (4) & 10 (15)] : Interest on Bonds issued by the Central Government under loan agreement with the International Bank for Re-construction and Development or Development Loan Fund of the U. S. A. will be exempt from taxation if the recipient is non-resident. The interest will, however, be taxed in full if the recipient is resident in India. Interest on $3\frac{1}{2}\%$ Ten-year Treasury Savings Deposit Certificates, Post Office Cash Certificates, Post Office National Savings Certificates, National Plan Certificates, 12-year National Plan Savings Certificates, 15-year Annuity Certificates and Post Office Savings Bank will be exempt from taxation in the hands of all classes of assesseees. Interest on Securities held by the Issue Department of the Central Bank of Ceylon will also be exempt.

§ 7. Value of Travel concession [Section 10 (5) & 10 (6)] : Value of any travel concession or assistance received by an Indian citizen from his employer for himself, wife and children for proceeding on leave to his home district should be excluded from the computation of his total income. In addition, value of any free or concessional passage money received by a non-Indian citizen from his employer for himself, wife and children for proceeding on home leave out of India should also be excluded from the computation on his total income.

Inward passages provided for the purpose of joining duty in India or outward passages provided on termination of service in India should be treated as ex-gratia payments in the hands of the employees and not liable to tax ; similarly, where an employee is transferred to or from India from parent company to its subsidiary company or from one company to another of the same group or from Head Office to a Branch in India or from one Foreign Branch to an Indian Branch, the inward or outward passages should be treated as exempt from taxation.

§ 8. Remuneration received by an Ambassador, Consul, Trade Commissioner etc. [Section 10 (6)] : Remuneration received by a non-Indian citizen as Ambassador, High Commissioner, Envoy, Minister, Charge d'affaires, Commissioner, Counsellor, Secretary, Adviser or Attache of an embassy, Legation or Commission of a foreign State should be excluded from the computation of total income. Similarly, remuneration received by a non-Indian citizen as Consul-General, Consul, Vice-Consul, Consular agent or as a Trade Commissioner or other official representative in India of a foreign State should be excluded from the computation of total income.

§ 9. Remuneration received by the employees of Foreign Organisations and Ships [Section 10 (6)] : Any remuneration received by a non-resident and non-Indian citizen employee of a Foreign enterprise which does not conduct any business within India is not liable to tax if the employee does not stay in India for more than 90 days. Salaries received by a non-resident and non-Indian citizen in respect of services rendered on a Foreign ship while lying in any port in India are not liable to tax if the employee does not stay in India for more than 90 days.

§ 10. Remuneration of Foreign Technicians [Section 10 (6)] : "Technicians" mean persons having specialised knowledge and experience in constructional or manufacturing operations, in mining or in the generation or distribution of electricity or other forms of power, as also industrial or business management techniques. It is not, however, necessary that the Technician should be actually handling a particular machine or physically engaged in the particular work in which he is an expert. Even if he is employed as a consultant on matters pertaining to his field of technical knowledge or practical experience, he should be regarded as a Technician.

In the case of Technicians having specialised knowledge and experience in constructional or manufacturing operations or in mining or in the generation or distribution of electricity or other forms of power, the exemption is admissible in respect of "salary" earned for 12 months from the date of arrival in India. This exemption will be extended to 36 months if his contract of service is approved by the Government within one year. This concession has been extended to visiting professors and teachers of foreign nationality with effect from the assessment year 1964-65. If the amount of tax payable on the salary is borne by the employer, then the exemption will continue for a further period of 60 months (36+60=96 months in total).

In the case of Technicians having specialised knowledge and experience in industrial or business management techniques, the exemption is admissible in respect of "salary" earned for six months from the date of arrival in India, provided his contract of service is approved by the Government within one year.

In all cases, the Technician must be "non-resident" of India in the four financial years preceding the year of arrival.

§ 11. Allowances for foreign service [Section 10 (7)] : Salary payable by the Government to an Indian citizen in respect of service rendered outside India will be deemed to accrue in India and as such liable to tax in full. But any allowance or perquisite paid outside India by the Government for rendering services outside India will be treated as "no income" and as such exempt from tax.

§ 12. Remuneration of person assigned to India under co-operative technical assistance programme [Section 10 (8) & 10 (9)] : The remuneration and foreign income of an individual assigned to duties in India under any technical assistance programme are exempt from tax. The exemption will also cover the foreign income of the family members of the individual.

§ 13. Death-cum retirement gratuity [Section 10 (10)] : Death-cum-retirement gratuity received under the Pension rules of the Central Government, a local Authority or a Statutory Corporation or of the Defence Service are exempt from tax. This benefit of exemption from tax has also been extended to persons in private employment to the extent of 15 months' average salary or Rs. 24,000 whichever is less.

Under Departmental instructions "salary" means the periodical payments made to the employee as remuneration for his services (i.e., basic salary). Any payments made to him by way of allowances or perquisites, or any payment in the nature of amenity, benefit or bonus should not, therefore, be taken into consideration as "salary" for the purpose of calculating the amount of exemption. "Each year of completed service" means a period or periods of twelve month's

service rendered by the employee reckoned from the date on which he commenced service with his employer. "Three years" means three "Calendar years" (commencing from the 1st day of January and ending on the 31st day of December) immediately preceding the "Calendar year" in which the gratuity is paid to the employee. [Revisional Problems—Questions No. 8 and 9]

§ 14. House Rent Allowance [Section 10 (13A)]: With effect from April 1964 a portion of house-rent allowance has been excluded from the computation of total income. The maximum amount of exclusion shall be the minimum of the following four sums :

- (1) The actual amount of house-rent allowance payable by the employer.
- (2) The excess of the actual house-rent paid by the employee over 10% of his salary.
- (3) 20% of the salary paid by the employer if the residential accommodation is situated in Calcutta, Bombay, Madras or Delhi and 10% of the salary in other places.
- (4) Rupees three hundred per month.

The term "Salary" for the purpose is the same sum which is taken for calculating Provident Fund contribution by the employee (i.e., Basic Salary and Dearness pay).

§ 15. Payments from Provident Funds and Superannuation Funds [Section 10 (11), 10(12), 10(13) & 10(25)]: Payments of accumulated balance due to an employee participating in a recognised Provident Fund or Superannuation Fund or a Provident Fund governed by the Provident Funds Act, 1925, or the Employees' Provident Funds Act, 1952, are excluded from the computation of total income. Income from "interest on securities" held by the Provident Funds governed by the Provident Act 1925 or the Employee's Provident Funds Act, 1952, recognised Provident Funds and Superannuation Funds are also exempt from taxation.

§ 16. Special Allowances [Section 10(14)] : Any special allowance, other than entertainment allowance, or benefit specifically granted to meet expenses incurred wholly, necessarily, and exclusively in the performance of duties are excluded from the computation of total income. It will include travelling allowance, outfit allowance, washing allowance etc.

§ 17. Scholarships and Gallantry awards [Section 10(16) & 10(18)] : Scholarships granted to meet cost of education, and gallantry awards are excluded from the computation of total income.

§ 18 Daily allowance to Legislators [Section 10(17)] : Daily allowance received by members of Parliament or of a State Legislature or of a Committee thereof are excluded from the computation of total income.

§ 19. Privy purse [Section 10(19)] : Amounts received by a Ruler of an Indian State as privy purse are excluded from the computation of total income.

§ 20. Income of the Local Authorities, Scientific Research Association, Universities and other educational Institutions [Section 10 (20), 10(20A), 10(21), 10 (22) & 10(22A)] : A Local Authority is defined as "A Municipal Committee, District Board, Body of Port Commissioners, or other Authority legally entitled or entrusted by the Government with the control or management

of a Municipal or Local Fund". Excepting the income arising outside the territorial jurisdiction of a Local Authority, the entire income is exempt from taxation. Similarly, the entire income of a scientific research association, university, hospital or other educational and medical institutions is exempt from taxation. In addition, the entire income of Housing Boards set up for planning, development or improvement of cities, towns, villages is also exempt.

§ 21. Sports Association & Trade Unions [Section 10 (23) & 10 (24)] : Income of sports associations controlling the games of cricket, hockey, football, tennis etc. is exempt from taxation. Similarly, Registered Trade Unions are not liable to pay tax in respect of their income from "house properties", "interest on securities" and "other sources".

§ 22. Income of Scheduled Tribesmen [Section 10 (26)] : Any income accruing from any source in any area specified in part A or B of the Table appended to Paragraph 20 of the Sixth Schedule to the Constitution or in the territories of Manipur and Tripura as also any income from "interest on securities" and "dividends" are entirely exempt in the hands of Scheduled Tribesmen.

§ 23. Livestock breeding or poultry or dairy farming [Section 10 (27)] : Income derived from business of livestock breeding or poultry or dairy farming, has been exempted from tax with effect from the assessment year 1965-66.

§ 24. Tax Credit Certificate [Section 10 (28)] : With effect from the assessment year 1965-66, any amount adjusted or paid in respect of "Tax Credit Certificate" under the provisions of Chapter XXIB, has been excluded from the computation of total income.

§ 25. Deduction from total income :

(a) Life Insurance Premia etc. (Section 80C)—Life insurance premia paid, contributions to recognised provident funds, superannuation funds, deposits in Post Office Savings Bank (Cumulative Time Deposit) Rules 1959, etc. have been excluded from the computation of gross total income to the extent of 60% of the first Rs. 5,000 and 50% of the balance amount upto 30% of the total income (before any deduction under Chapter VIA) subject to a maximum of Rs. 15,000 for an individual and Rs. 30,000 for a Hindu undivided family. It has been explained fully in the illustrations.

(b) Medical treatment to dependant relatives (Section 80D)—Fees and charges for medical treatment (including nursing) of dependant relative to the extent of Rs. 600 with a maximum of Rs. 2,400 (if the dependent relative has spent more than 182 days in a hospital, nursing home or approved medical institution) has been excluded from the computation of the total income of an individual or a Hindu undivided family resident in India.

(c) Payment for securing retirement annuities (Section 80E)—Contributions made to any approved fund by an Indian citizen resident in India and partner in a registered firm of Chartered accountants, architects, solicitors, lawyers, etc. has been excluded from the computation of his gross total income to the extent of 10% thereof with a maximum of Rs. 5,000.

(d) Educational Expenses (Section 80F)—With effect from the assessment year 1968-69 provision has been made for a deduction from the com-

putation of gross total income of an individual who is resident but is not a citizen of India in respect of educational expenses incurred by him for full time education of his children outside India. The total amount of deduction is Rs. 1,500 for each child subject to a maximum of Rs. 3,000.

(e) Donation for Charitable purposes (Section 80G)—With effect from the assessment year 1968-69 provision has been made for a deduction of 50% in the case of a company and 55% in the case of any other assessee, of the amount of donations amounting to more than Rs. 250 made to any Institution or Fund established in India for charitable purposes. The maximum limit of donation is 10% of the gross total income as reduced by the non-taxable portion thereof or Rs. 2,00,000 whichever is less. (Vide Illustrations 36 and 42)

(f) New Industrial undertakings employing displaced persons (Section 80H)—With effect from the assessment year 1968-69 provision has been made for a deduction of 50% of the income with a maximum of Rs. 1,00,000, arising to new industrial undertakings employing a minimum number of 40 workers on every working day, 60% of which must be displaced persons or repatriates from East Pakistan, Burma, Ceylon etc. To secure exemption the industrial undertakings must not be formed by splitting or reconstructing an old business concern but newly set up and must begin to manufacture or produce articles any time during 1st April, 1967 and 31st March, 1970. The deduction is admissible from the assessment year relevant to the year in which the production starts for 10 years.

(g) Profits of specified industries (Section 80-I)—With effect from the assessment year 1966-67, provision was made for a deduction of 8% of the profits arising to an Indian Company in which the public are not substantially interested or any other non-Indian Company which has made the prescribed arrangements for the declaration and payment of dividends within India, out of generation or distribution of electricity or any other form of power or of construction, manufacture or production of anything specified in the Fifth Schedule. This deduction is not available to a company whose total income is less than Rs. 50,000.

(h) New Industrial undertakings or ships or hotel business (Section 80J)—To secure exemption, the industrial undertakings must not be formed by splitting or reconstructing an old business concern but newly set up after 1st April, 1948, employing more than 10 persons where the manufacturing process is carried on with the aid of power and 20 persons in other cases. In the case of hotels the exemption was allowed from the assessment year 1961-62 to Indian companies which had a paid up capital of Rs. 5 lakhs or more and were approved by the Central Government for tourist purpose. In the case of Indian shipping Companies the exemption was allowed from the assessment year 1967-68. The exemption is limited to 6% of the capital employed in the business and is admissible from the assessment year relevant to the year in which the production starts for six years in the case of a Co-operative Society and for four years in the case of other industrial undertakings, hotels and shipping companies. Where the amount of income is less than 6% of the capital employed the deficiency will be carried forward from the assessment year 1968-69 for seven years in the case of a Co-operative Society and for five years in the case of other concerns.

(i) Dividends from new industrial undertakings, hotels, or shipping business (Section 80K)—Dividends paid out of exempted profits (tax holiday) of new Industrial undertakings, hotels and shipping business are not includible

in the computation of gross total income of the share-holders of the respective organisations from the assessment year 1968-69.

(j) Dividends from Indian Companies (Section 80L)—With effect from the assessment year 1968-69 dividends received from Indian companies amounting to less than Rs. 500 are not includible in the computation of gross total income of any assessee. If the amount is more than Rs. 500 then the entire amount should be included. With effect from the assessment year 1969-70 the concession has been increased to the 1st Rs. 500, the balance amount being taxable. The non-taxable amount was increased to Rs. 1,000 with effect from the assessment year 1970-71. Where an assessee is also entitled for a deduction in respect of dividends from new industrial undertakings etc. the amount of Rs. 500 or Rs. 1,000 as case may be should be reduced by such “tax holiday” dividends.

(k) Intercompany dividends (Section 80M)—With effect from the assessment year 1968-69 dividends received by a company from a “domestic company” shall not be included in the computation of gross total income of the recipient company in the following manner—

- | | |
|--|------------------------|
| (a) Dividends received by a “foreign company” from a closely held Indian Company mainly engaged in priority industries. | 80% of such dividends. |
| (b) Dividends received by a “Foreign Company” from any “domestic company [other than an Indian Company referred in (a)]. | 65% of such dividends. |
| (c) Dividends received by any “domestic company” from any other “domestic company”. | 60% of such dividends. |

(l) Royalty regarding “technical know-how” (Section 80 MM)—With effect from the assessment year 1970-71 an Indian Company which provides “technical know-how” to any person carrying on a business in India will be entitled to deduct 40% of any royalty, commission, fees or any other receipts (excluding “capital gains”) in the computation of its total income. This deduction will be available where the “technical know-how” is likely to assist in the manufacture or processing of goods or materials, installation or erection of machinery and plant, mining including prospecting, or in agriculture, animal husbandry, dairy, or poultry farming, forestry or fishing and the royalty, commission, fees etc. are receivable in terms of an agreement entered after 1-4-69 and approved by the Central Government before 1st October of the relevant assessment year.

(m) Dividends from non-Indian Companies (Section 80 N)—60% of the dividends received on shares allotted by a non-Indian company in consideration of any patent, invention, model design, secret formula or process or similar property right or information concerning industrial commercial or scientific knowledge, experience or skill or technical services rendered by an Indian company to the non-Indian company under an agreement approved by the Central Government, shall not be included in the computation of gross total income of the recipient company with effect from the assessment year 1968-69. The concession has been raised to 100% with effect from the assessment year 1969-70.

(n) Royalties, commission, fees etc. (Section 80-O)—60% of the royalty, commission, fees or similar payment received by an Indian company from a non-

Indian company in consideration of the supply of technical "knowhow" or technical services to the non-Indian company in pursuance of an agreement approved by the Central Government, shall not be included in the computation of gross total income of the recipient company with effect from the assessment year 1968-69. The concession has been raised to 100% with effect from the assessment year 1969-70.

(o) Income of Co-operative Societies (Section 80P)—With effect from the assessment year 1968-69 the entire income of the following category of Co-operative Societies has been excluded from the computation of gross total income :—(i) Societies carrying on the business of banking or providing credit facilities to the members, or carrying on a cottage industry or the marketing of the agricultural produce of its members or the purchase of agricultural implements, seeds, live-stock or other articles intended for agriculture for the purpose of supply them to its members, or the processing, without the aid of power, of the agricultural produce of its members. (ii) Societies being primary societies engaged in supplying milk raised by its members to a federal milk Co-operative Society. (iii) In respect of any income derived by the Society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities. (iv) In respect of interest or dividends derived by the Society from its investments with any other Society. (v) In respect of interest on securities and income from House Properties in the case of Societies other than a Housing Society, an Urban Consumers' Society or a Society carrying on transport business or a Society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income of the Society does not exceed Rs. 20,000.

(p) Dividends from Co-operative Societies (Section 80Q)—Dividends paid out of the exempted profits of Co-operative Societies are not includible in the gross total income of the share-holders from the assessment year 1968-69.

(q) Remuneration for Service rendered outside India by a teacher (Section 80R)—With effect from 1st April, 1966, provision was made for a deduction of 50% of the remuneration received for the first 36 months for rendering services outside India by a professor, teacher or research worker who is a resident individual as also a citizen of India from any foreign university or other educational institution or any foreign notified association, from the computation of gross total income.

(r) Professional income from Foreign sources (Section 80RR)—With effect from the assessment year 1970-71 an author, play-wright, artist, musician or actor, resident in India, deriving income from his profession from any foreign source will be entitled to deduct 25% of such income which is received in or brought into India in accordance with the Foreign Exchange Regulation Act, 1947 and any rules made thereunder.

(s) Compensation for termination of managing Agency, etc. (Section 80S)—Compensation or similar payments received by an assessee other than a company on the termination or variation of managing agency, commission agency or any other similar agency is taxable as income from business, profession or vocation in terms of Section 28 (ii). As the lump receipt will be treated as income of one year, the amount of tax payable would therefore be heavy. To remove this hardship, 25% of such compensation, subject to a maximum of Rs. 1 lakh, shall be deducted and the balance amount shall be included in the computation of the gross total income from the assessment year 1968-69.

(t) Long-term Capital Gains (Section 80T)—Profits arising to an assessee other than a company from sale of “Long-term Capital asset” shall be excluded with effect from the assessment year 1968-69 in full if the gross total income of the assessee is less than Rs. 10,000. If the gross total income is more than Rs. 10,000, then the first Rs. 5,000 of the profits arising from sale of “Long-term Capital asset” comprising of lands or buildings and 45% of the balance shall be excluded with effect from the assessment year 1968-69 from the gross total income. If the gross total income is more than Rs. 10,000 and the profits arise only, from sale of “Long-term capital assets” other than lands and buildings (i.e. shares, securities etc.) then the first Rs. 5,000 of such profits and 65% of the balance shall be excluded from the computation of gross total income with effect from the assessment year 1968-69. (Vide Illustration No. 28).

(u) Blind Person (Section 80U)—With effect from the assessment year 1969-70 provision has been made for a deduction of Rs. 2,000 from the gross total income of a resident individual who is totally blind at the end of the relevant previous year.

CHAPTER IV

INCOME PARTIALLY TAXABLE

In addition to the incomes enumerated in Chapter III, there are certain other incomes which are not liable to tax but are included in the computation of total income which in its turn determines the rate or rates of tax applicable to successive slices of income though certain parts thereof may be exempt. The effect of this inclusion, therefore, increases the average rate of tax applicable on the remaining taxable portion of the total income.

§ 1. Income included in total income but exempt from income-tax (Sections 86 & 86A).

(a) Share of income in an unregistered firm or an association of persons—The amount of income which a partner of an unregistered firm or a member of an association of persons (other than a Hindu undivided family or a company) is entitled to receive in respect of which income-tax is payable by the firm or the association, will not be liable for income-tax again. If, however, the total income of the firm or the association is below the taxable limit and as such no tax is payable by it, then the partners or the members, as the case may be, will be liable to pay income-tax in respect of their proportionate shares.

(b) Interest on tax-free securities—Income-tax payable on the interest receivable on any Rupee Security issued or declared income-tax free by the Central Government or a State Government will be reduced by the amount of income-tax but not exceeding 25% of such income (increased to 27·5% from the assessment year 1966-67).

Illustration 1.

Dr. Akinchan Adhicary furnished you with the following particulars with a request to specify (1) the incomes which should be excluded from the computation of total income, and (2) the incomes which should be included in the computation of total income but will not be liable for payment of tax. He also requested you to compute his total income for the year ended 31st March, 1970 on the basis of which he will submit his return of income to the Income-tax Authorities.

- (1) Income from Medical profession Rs. 8,000
- (2) One-fourth share of income (from the house properties belonging to the undivided family) amounting to Rs. 6,000.
- (3) Rs. 100 for refereeing at a football match between Veteran's XI and Doctor's XI.
- (4) One-third share of profit of unregistered firm (Sleeping partner) amounting to Rs. 5,000.

- (5) Rs. 150 being interest in Savings Bank Account with Kalighat Post Office.
- (6) Rs. 250 being interest on Fixed Deposit with Central Co-operative Credit Society Ltd.
- (7) He paid Life Insurance Premium of Rs. 2,000 (Capital sum assured being Rs. 40,000 without profit).

ANSWER

The following incomes should be excluded from the computation of total income :

(1) One-fourth share of income (from the house properties belonging to the undivided family) amounting to Rs. 6,000 [Vide Section 10 (2)].

(2) Rs. 100 for refereeing at a football match between Veteran's XI and Doctor's XI should be treated as casual income. [Vide Section 10 (3)].

(3) Rs. 150 being interest in Savings Bank Account with Kalighat Post Office [Vide Section 10 (15) (ii).]

No tax is payable on the following incomes but these will be included in the computation of total income.

(1) One-third share of profit of an unregistered firm (Sleeping partner) amounting to Rs. 5,000.

As the firm has paid income-tax on a total income of Rs. 15,000, the one-third share of Rs. 5,000 will not be liable for payment of income-tax in the hands of Dr. Adhicary.

Computation of total income for the year ended 31st March, 1970.

1. Professional income	Rs. 8,000
2. Share of profit of an unregistered firm	5,000
3. Interest on Fixed Deposit with Central Co-operative Credit Society	250
	Rs. 13,250
Less : Life Insurance Premium 60% of Rs. 2,000	1,200
	Rs. 12,050
Total Income	Rs. 12,050

Rebate of income tax will be admissible on the following amount at the average rate per Rupee (i.e., total income-tax payable on Rs. 12,050 divided by the total income).

Share of profit of an unregistered firm	Rs. 5,000
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Note : Interest received on fixed deposit with the Co-operative Credit Society is taxable ; only profits are tax-free.

Revisional Problems—Questions No. 2 and 3.

CHAPTER V

FOREIGN INCOME AND SCOPE OF ITS TAXATION

§ 1. **Assessment of foreign income**—Income which accrues, arises or is received outside India is termed foreign income. The imposition of tax in respect of foreign income has necessitated the creation of a distinction between permanent residents of India and persons whose presence in India is more or less of a temporary or casual nature. Consequently, in respect of certain class of assesseees, i.e., residents and ordinarily residents, it is taxable on accrual basis. Before the incidence of taxation between these classes of assesseees is further discussed, let us examine the difference between their status.

§ 2. Resident but not ordinarily resident (Section 6) :

(a) **Residence of individuals**—An individual is resident in India in any year if he (i) stays in India for 182 days or more in that year ; (ii) keeps a dwelling house for him for 182 days or more and stays for 30 days or more in that year ; (iii) stays for a period of 365 days or more during four years preceding to that year and is present in India for 60 days or more in that year. An essential condition common to all the three definitions is that there must be physical presence in India for 30 days in any year to constitute a person resident in that year. Consequently, a person who remains outside India during the entire "previous year" cannot be resident whatever connections he may have in India during the year.

Maintenance of a house does not necessarily mean that it should be owned by the assessee but it must be available for occupation by him at any time during the year. Maintaining a residence and setting up an establishment are different things from owning or contracting to buy an unfurnished house. The question of ownership is not at all necessary for the purpose of determining residence in as much as a tenant can also maintain a dwelling place for him. The word "resident" indicates a personal quality and is not descriptive of a person's property.

(b) **Residence of Hindu undivided families, firms and other associations**—A Hindu undivided family, firm or other association of persons is resident in India unless the control and management of its affairs is situated wholly without India. Families, firms, or associations will be resident in India even if any part of the control or management is situated in India. Consequently, when a partner of a firm, carrying on business in Ceylon resided in India and managed a branch of the firm in India, it was held that the control was not situated wholly outside India and the firm was, therefore, resident in India.

The control and management must be *de facto* and not *de jure*. A liberal meaning is to be given to the words "wholly situated" and it must be ascertained in every case where in fact the control and management of the business is situated apart from the temporary journeying of the active partner or the residence of the dormant ones.

One Mr. B carried on business in South Africa . In 1912 he returned to India leaving his business in the hands of three managers. In 1937 he executed a Deed by which he admitted the three managers, as partners having

a share in profits and losses but retained to himself the full control of the business and even the right to dismiss any of the three partners. Mr. B, however, stated in an Affidavit that he had not at any time either controlled and managed or attempted to control or manage the affairs of the business in South Africa. Two of the partners filed Affidavits stating that they had been carrying on the business of the firm without receiving any instructions from B who only kept himself in touch just to caution the partners while they informed him about the general condition of trade prevailing in South Africa. It was held, under the circumstances, that the firm was not resident in India.

A firm consisting of seven partners, all of whom were permanent residents in the taxable territories, owned a Tea Estate situated in Ceylon. The Estate was managed by an agent who looked after its working from day to day and stayed on Ceylon permanently. All the sales were effected by the agent, the pass books for the bank account for the Estate were kept in his name, and he received the income and made the disbursements from time to time. The agent, however, submitted to four of the partners, at the beginning of every year a budget covering important matters to be attended to in connection with the Estate, and it was only after the budget was approved by them that the agent was at liberty to act upon it. The agent had also asked for directions during the relevant accounting year, regarding the manuring of the tea garden, the salary to be paid to the employees, the purchases to be made, the expenditure to be incurred in constructing a building and the manner in which the goods should be packed and sent, and the partners had given him the requisite directions.

It was held by the Hon'ble Supreme Court on the basis of the above facts that the control and management of the affairs of the firm was not wholly situated in Ceylon. The act of approval of the budget submitted by the agent amounted to an act of exercising the right of control and management of the firm and as such it was "resident" in the taxable territories. [I T. R., Vol. 34 (1958), page 1]

(c) Residence of Companies— A company is resident in India in any year if the control and management of its affairs is situated wholly in India in that year. The definition shows that the country of incorporation does not determine its place of residence, but it is the place of control and management that determines a company's place of residence. So, if any part of the control and management is outside India, then the company would not be treated as resident in India.

§ 3. Resident and Ordinarily Resident (Section 6) :

(a) An **individual** is "Resident and Ordinarily Resident" in any "previous year" i.e., accounting year if he has been resident in India in nine out of ten "previous years" preceding that year and has stayed in India for more than 730 days in the last seven "previous years" preceding that year. Both these conditions are cumulative and if we fail to prove either of the conditions, then we fail to establish that he is "Resident and Ordinarily Resident". "Ordinary residence" is not measured by the length of technical residence alone, but also by the period of physical presence during the preceding seven "previous years"; on the other hand, the period of physical presence alone, however long, is not enough, there must also be technical residence for nine out of ten preceding "previous years".

The object of taking both these factors into account is clear. Two classes of individuals were considered when the Legislature introduced the principle

of taxing permanent residents, viz., those who were on the upward path of progress from foreigners to full citizens and those who were on the downward path, falling off from full citizens. In the case of the former, merely because they come and go, and stay in India, they should not be taxed as ordinary residents. They can be taxed as such, only after they complete a period of nine years' residence. In the case of the latter even, if they have been technically residents for over nine years, they should not be taxed if they have not stayed in India for more than 730 days in the preceding seven "previous years".

Complete absence from India for two "previous years" will destroy the status of a "Resident and Ordinarily Resident" until the individual completes the fresh period of nine years' residence. Complete absence for one full "previous year" in every five "previous years" would enable an individual, who has not become an "ordinarily resident", to keep up the status of "not Ordinarily Resident".

(b) A Hindu undivided family is ordinarily resident in India if its Manager is "ordinarily resident" in India in accordance with the principle discussed above. When the Manager of a Hindu undivided family dies or is replaced by another for any reason, the period of residence in India of the successive Managers of the family during its continued existence should be taken into account in determining whether the family is "Ordinarily Resident" in India or not.

Illustration 2.

From the following particulars determine the status of Mr. Brown who arrived in India for the first time on the 15th March, 1952, his previous year being April to March.

Date of Arrival		Date of Departure	
15th March,	1952	30th November,	1952
1st October,	1953	31st May,	1954
15th August,	1955	31st October,	1956
1st January,	1958	30th June,	1958
1st November,	1959	30th June,	1961
1st August,	1962	30th June,	1963
15th April,	1966	15th December,	1967
15th July,	1969	28th February,	1970

ANSWER

Assessment year	Accounting year	No. of days stayed	Status	Remarks
1952-53	1951-52	17 days	Non-resident	Less than 182 days.
1953-54	1952-53	244 „	Resident	More than 182 days.
1954-55	1953-54	182 „	„	More than 182 days.
1955-56	1954-55	61 „	„	Less than 182 days. but more than 365 days during four years ended 31-3-54.

A sum of money may be received in more than one way, that is, by transfer of a coin or a negotiable instrument or other document which represents and produces coin and is treated as such by business; even a settlement in account may be equivalent to a receipt of a sum of money although no money may pass. In some instances, a sum may be regarded as having been "constructively remitted" to this country, e.g., where an assessee draws a cheque on his banker abroad and cashes it here. It is impossible to define the various ways in which "a remittance" to this country can be made or to lay down exactly the circumstances in which the liability can be avoided.

Borrowing money in India is not the same as receiving income, as such if a debt due by an assessee to a Bank in India is transferred to its London Office and discharged at London by the sale of Sterling securities belonging to the assessee, then it cannot be said that a "constructive remittance" to India of the sale proceeds of the Sterling securities has taken place. But if the Bank in India allows the assessee to overdraw in anticipation of getting money from London, then the overdraft should be treated as a "constructive remittance" of the sale proceeds of the Sterling securities in India.

Assessment years 1969-70 and 1970-71—Liability to tax is contrasted according to the status of the assessee in the accounting year.

	Resident and ordinarily resident	Resident but not ordinarily resident	Non- Resident
1. Income which accrues or arises in India (irrespective of the place of its receipt).	Liable in full	Liable in full	Liable in full
2. Income which is received in India (irrespective of the place of its accrual).	Do.	Do	Do.
3. Income which accrues, arises or is received outside India from business controlled in or profession or vocation set up in India.	Do.	Do.	Excluded from the total income
4. Income which accrues, arises or is received outside India not included in item 3.	Do.	Excluded from the total income	Do.

Revisional Problems—Questions No. 5, 6 and 7

CHAPTER VI

CLASSIFICATION OF TAX-PAYERS [Section 2 (31)]

§ 1. Assessee defined [Section 2 (7)]—Assessee means a person by whom income-tax, interest or penalty is payable under the Income-tax Act and includes any person in respect of whom any proceeding relating to assessment of income, determination of loss or computation of refund, has been taken. The term includes also persons who are “deemed” to be assessee under any provision of the Act. Normally income-tax is payable by every individual, Hindu undivided family, Company, Local Authority, Firm, Association of Persons and by every artificial juridical person. The liability of each class of tax-payers will now be discussed.

§ 2. Individual—The term “Individual” has not been defined in the Act. It means a “human being” or a single person in its ordinarily accepted sense. A minor who earns by his own skill or a person of unsound mind who carries on a business under his control is assessable as an Individual. A Trustee or Administrator or Executor is also assessable as an Individual in his representative character.

In computing the total income of an individual, the following kinds of income should be included : (i) Income derived by membership of wife or minor children in a firm of which the husband or father is a partner ; (ii) Income from assets transferred to wife or minor children otherwise than for adequate consideration or in connection with an agreement to live apart ; (iii) Income from assets transferred to third parties otherwise than for adequate consideration if the transfer was for the benefit of his wife or minor children. (Section 64)

Revisional Problems—Question No. 52

An assessee who held 350 shares in a company transferred the shares to his minor son by way of gift. Later the minor son was allotted 744 bonus shares for his original holding of 350 shares. The question was whether the dividend income from the 744 bonus shares allotted to the minor son could be included in the total income of the father. It was held by the Hon'ble Bombay High Court that although the bonus shares were in the hands of the minor son, undoubtedly an accretion to the assets transferred by the father, they could not be regarded as “assets transferred” by the father, the dividend income from those bonus shares could not be regarded as arising even indirectly from the assets transferred by the father, and therefore, the dividend income on the 744 bonus shares could not be taxed in the hands of the father. [I. T. R., Vol. 36 (1959), page 577]

There is no logical distinction between income arising from assets transferred by the assessee to his wife and income arising from sale of the assets so transferred. The profits or gains which arise from the sale of the asset would arise or spring from the asset, although the operation by which the profits or gains is made to arise out of the asset is the operation of the sale. If the asset is employed, say by way of investment and produces income, the income arises or springs from the asset ; the operation, which causes the income to spring from the asset, is the operation of the investment. In the operation of the invest-

ment, income is produced while the asset continues to belong to the wife, while in the operation of a sale, gain is produced, which is still income, but in the process possession of the asset is parted with. Although the processes involved in the two cases are different, the gain which has resulted to the owner of the asset, in each case, is the gain, which has sprung up or arisen from the asset. The inclusion of "capital gains" in the definition of "income" was for the first time enacted in 1947. It is true that at the time when Section 16(3) (a) (iii) (old section) of the Indian Income-tax Act, 1922, was enacted the definition of "income" did not include "capital gains" but capital gains having been brought within the meaning of "income" in Section 2(6C) (old section) the expression "income" as used in Section 16(3)(a)(iii) (old section) must be construed according to the amended definition of the word and would, therefore, include capital gains. There is nothing in the context or language of Section 16(3)(a)(iii) (old section) of the Act to suggest that capital gains are excluded from its scope.

It was held, accordingly by the Hon'ble Supreme Court that the capital gains derived by the wife of the assessee by the sale of assets transferred to her by him had to be included in the total income of the assessee under Section 16(3)(a)(iii) (old section) of the Indian Income-tax Act, 1922. [I. T. R., Vol. 68 (1968), Page 503]

(Regarding Residence—see Chapter V §§ 2 & 3)

(a) Dead person (Sections 159 & 238)—An executor, administrator or legal representative of a deceased person should be treated as the assessee for the purpose of assessment of the income of the deceased person. The liability is, however, confined to the payment of tax to the extent to which the estate is capable of meeting the charge and does not rank in any way prior to other charges to which the estate may be liable.

When no notice has been served on a deceased person, a notice may be served on the executor, administrator or other legal representative and an assessment made as if such person were the assessee. Where notice has been served on a deceased person, but no return has been made or where the return made is in the Income-tax Officer's opinion incorrect or incomplete, the Income-tax Officer may assess the income and determine the tax. For the purposes of making such assessments, the Income-tax Officer may require the executor, administrator or legal representative of the deceased to produce documents or other evidence.

The executor, administrator, or the legal representative is similarly authorised to claim a refund of income-tax which would but for his death, have been payable to the deceased person and to appeal against the order of the Income-tax Officer who refuses to grant the refund.

(b) A Married Woman is liable to Income-tax in respect of any income which she earns on her own account or any income from assets inherited by her or gifted to her by any one other than her husband. The residence rules will be applied to her in her individual capacity.

Where the married woman and her husband are partners in a firm the income of the married woman from the partnership shall be included

in the total income of her husband if the married woman's total income (excluding her partnership income) is less than her husband's total income (excluding his partnership income); on the other hand if the married woman's total income (excluding her partnership income) is more than her husband's total income (excluding his partnership income) then the husband's income from the partnership shall be included in the total income of the married woman. Where the married woman as also her husband are partners in a firm in which their minor child has been admitted to the benefits of the said partnership, the income of the minor child from the partnership shall be included in the total income of the parent whose total income (excluding the partnership income) is greater. (Section 64)

(c) **Guardians, Trustees and Agents (Section 160)**—Guardians and trustees of a minor, lunatic or idiot are liable to be assessed in respect of any income which they are entitled to receive on behalf of the beneficiaries concerned. The liability to assessment is to be in the same manner and to the same extent as it would have been, had the assessment been made directly on the beneficiary. The Act, however, does not permit double taxation in the case of trusts once in the hands of the trustees and again in the hand of the beneficiaries. Its inclusion in the total income may raise the rate of tax leviable on the remaining income of the beneficiary but the income should not itself be subjected to income-tax a second time in the hands of the beneficiary if it has borne income-tax in the hands of the trustees. In determining the extent to which a beneficiary has been taxed when a part of the income of a trust has suffered taxation, his share is deemed to have been derived proportionately from the whole income of the trust and therefore, to have been taxed in the same proportion as the income of the trust has been taxed.

Any person employed by or on behalf of a person residing outside India or having any business connection with such person or through whom such person is in receipt of any income, profits or gains, which are chargeable under the Act, is liable to be assessed in the like manner and to the same amount as tax would be leviable upon such non-resident. The tax may, however, be levied upon and recovered from the non-resident direct. The liability of the agent to pay tax is personal, though he is entitled to recoup himself from the non-resident.

(d) **Court of Wards, Administrator-General, Official Trustees, etc. (Section 160)**—Court of Wards, Administrator-General, Official Trustee, receivers and managers appointed by Courts and trustees appointed under duly executed trust instrument or Will, who are entitled to receive any income, profits or gains on behalf of a beneficiary, are liable to tax in the like manner and to the same extent as would be leviable upon the beneficiary and all the provisions of the Act are to apply accordingly. Where the income is not specifically receivable on behalf of any one beneficiary or where the individual shares of the beneficiaries are indeterminate or unknown, the tax is leviable at the maximum rate.

It does not, however, prevent the direct assessment of the beneficiaries specifically on whose behalf the income is receivable or the recovery of the tax from him direct. But the income should not itself be subjected to tax a second time, if it has already borne tax in the hands of the trustees.

§ 3. **Hindu undivided family**—The Income-tax Act does not define Hindu undivided family and we have to seek guidance from the sacred books and customs of the Hindus and from judicial pronouncements. A Hindu

undivided family is a co-parcenary or tenancy in common arising by law among certain relatives of stated degree including relations by adoption. It cannot be created by contract among strangers or others outside the stated degree of relations.

There are two Schools of Hindu Law, the Dayabhaga and the Mitakshara—the former prevailing in the greater part of Bengal and the latter in the rest of India. The fundamental difference between the two is in their attitude towards ancestral property and the admission of females into the co-parcenary under certain circumstances. Under the Dayabhaga Law, a son has no right in the family property so long as his father is alive, whereas under the Mitakshara Law, every male member of the family has a right in the family property as soon as he is born.

The departmental instructions in this connection are as follows :

“The son of a Hindu (governed by any school of Hindu Law) does not acquire by birth any interest in his father's self-acquired property. In respect of the income of such property, the father is to be assessed as an individual. In the case of Hindus not governed by the Dayabhaga Law, the son acquires by birth an interest in his father's ancestral property and therefore, after the birth of a son the income from ancestral property is to be assessed as the income of a Hindu undivided family. According to the Dayabhaga Law, however, the son does not acquire by birth any interest in the ancestral property. His rights arise for the first time on his father's death. In the father's lifetime, therefore, the income from ancestral property is to be assessed as the income of an individual unless the father himself is a member of a co-parcenary. The income of a sole surviving male member of a Hindu undivided family governed by the Mitakshara Law is to be assessed as his personal income if he has no son. The existence of a wife and daughters does not alter the position. Under the Dayabhaga Law, the position is different. According to that law, a co-parcenary is formed only when the inheritance opens, and there must be two or more male heirs before a co-parcenary can be formed. But if any of these male co-parceners dies leaving surviving him a widow or a daughter, that widow or daughter would be admitted into the co-parcenary in the place of the deceased co-parcener. As for example, a Hindu governed by the Dayabhaga Law dies leaving three sons A, B and C. The three sons, A, B and C, inherit the property jointly and form a co-parcenary (although each inherits a defined share). If before partitioning their shares, B dies leaving a widow, BW and C dies leaving a daughter, CD, then A, BW and CD will be members of the co-parcenary originally formed by A, B and C. It will thus be seen that the Dayabhaga Law differs from the Mitakshara in admitting females into the co-parcenary in certain circumstances, although they cannot originally form a co-parcenary. A co-parcenary is *fortiori* an undivided Hindu family and the income from the co-parcenary property will, according to the Dayabhaga Law, be assessable as the income of an undivided Hindu family notwithstanding that such co-parcenary consists of only one male member and one or more female members. The income from ancestral property of a Hindu (governed by any school of law) with no son but with a wife and/or daughters is to be assessed as the income of an individual. It would be inconsistent with the interpretation of the law of the Mitakshara to hold that property which a man has obtained from his father belongs to a Hindu undivided family by reason of his having a wife and/or daughter. Indeed since under the Dayabhaga Law a son has no greater right in his father's property than of maintenance during his minority and the father is the absolute owner of property devolving upon him, even the existence of a

son will not make the income of the property in the father's hands the income of an undivided family."

The notion of a "Hindu undivided family" and that of a "Hindu co-parcener" should not be mixed up for the purpose of the Indian Income-tax Act. The unit of assessment under the Income-tax Act is the Hindu undivided family of which a female can be a member. A Hindu female cannot be a co-parcener under Hindu law, but the Indian Income-tax Act is not concerned with the Hindu co-parcenary. Where there is no Karta in a Hindu undivided family or where the male members are all minors and there is no one who can act as Karta, or where there are no males at all, there is no legal bar to a female acting as 'manager' representing the Hindu undivided family for the purposes of assessment to income-tax. Again, for the purposes of assessment to income-tax of the unit of a Hindu undivided family consisting only of the mother and her minor sons, there is no legal bar to the mother representing the family as 'manager'. [I. T. R., Vol. 38 (1960), page 316] [Calcutta High Court decision]

A joint Hindu family springs from a Hindu male and every Hindu male can be the stock of a fresh descent constituting a joint Hindu family or a Hindu co-parcenary. Where, from a Hindu male a joint Hindu family springs into existence, this family goes on having its different branches and sub-branches. Each branch starts with the male descendant of the common ancestor and each sub-branch with the male descendant of the head of the branch. While the entire group proceeding from the common ancestor with its several branches and sub-branches in the normal undivided state is a Hindu joint family, each of the branches and each of the sub-branches again is a Hindu joint family according to the concept of a joint family under the Hindu law. It is, therefore, possible for a main Hindu undivided family to be composed of a large number of branch families, each of the branches itself being a Hindu joint family and so also the sub-branches of those branches.

Where a Hindu joint family consists of branch families, each of the branch families may possess property which constitutes the joint family property of that branch alone and in which the other branches or the main Hindu family as such have no right or interest. The smaller joint family can have a legal existence and is capable of holding property of its own as distinct from the property of the main family while the main family remains intact. While the main family may possess property which belongs to the entire family or in other words, belongs to the hotchpotch of the main family, each of the smaller joint families existing within the main family may possess property which belongs to its own hotchpotch.

Under the Hindu law any member of a joint family can throw his self-acquired property in the hotchpotch of the family to which he belongs and thus make it the joint family property of the said family. A member of the smaller joint family can, therefore, impress his self-acquired property with the character of the joint family property of the smaller family to which he belongs. He is no doubt also a member of the main joint family and he can, if he so chooses, throw his self-acquired property in the hotchpotch of the main family also. But that will be a matter of his volition. There is nothing in Hindu law or in the concept of a joint family under the Hindu law which prevents him from throwing his property in the hotchpotch of the smaller unit to which he belongs while the larger unit remains intact. The throwing of property into the common hotchpotch of the joint family is possible even if the family hotchpotch is empty i.e., even if there is no nucleus of the family,

The assessee (Sri M. M. Khanna) was a member of a Hindu undivided family consisting of his father, his younger brothers and the children of himself and his brothers and other female members. He made a declaration whereby he threw the separate and self-required property which he possessed into the joint family hotchpotch of the smaller joint family consisting of himself, his wife, son and two daughters, to be held by him thereafter as Karta of the smaller family. Before making the declaration he had not declared his intention to separate from the main joint family of which his father was the Karta.

It was held under the circumstances by the Hon'ble Bombay High Court (i) that there was no legal obstruction whatsoever in the way of the assessee, giving away his self-acquired property not to the entire main family but to the smaller family consisting of himself, his wife and children; (ii) that the smaller family was an assessable unit capable of holding property as belonging to it and the circumstance that it was also a branch of another larger assessable unit did not in any way affect it from being an assessable unit itself. It was not necessary in order that the smaller family could be an assessable unit the larger family should have been completely disrupted by a partition; (iii) that, therefore, the income from the property thrown into the hotchpotch of the smaller family could not be assessed as the income of the assessee. [I. T. R., Vol. 49 (1963), page 232]

It is now well settled that a Hindu undivided family cannot as such enter into a contract of partnership with another person or persons. The Karta of the Hindu undivided family, however, may and frequently does enter into partnership with outsiders on behalf and for the benefit of his joint family. But when he does so, the other members of the family do not vis-a-vis the outsiders, become partners in the firm. They cannot interfere in the management of the firm or claim any account of the partnership business or exercise any of the rights of a partner. So far as the outsiders are concerned, it is the Karta who alone is, and is in law recognised as, the partner. Whether in entering into a partnership with outsiders the Karta acted in his individual capacity and for his own benefit or he did so as representing his joint family and for its benefit is a question of fact. If for the purpose of contributing his share of the capital in the firm the Karta brought in monies out of the till of the Hindu undivided family, then he must be regarded as having entered into the partnership for the benefit of the Hindu undivided family and as between him and the other members of his family, he would be accountable for all profits received by him as his share out of the partnership profits and such profits would be assessable as income in the hands of the Hindu undivided family.

Vis-a-vis a company the managing director is undoubtedly the individual person who is appointed as such. The company is not concerned with the managing director's Hindu undivided family or the members thereof, just as the outside partners know only the Karta in his individual capacity as their partner and are not concerned with his Hindu undivided family or its members. The question whether the amount received by the Karta by way of managing director's remuneration in the one case or as his share of profits in the partnership business in the other case is his personal income or is the income of his Hindu undivided family cannot arise as between the company and the Karta as the managing director or between the outside partners and the Karta as a partner. Neither the company nor the outside partners, as the case may be, is or are interested in such a question. Such question can arise only as between the Karta and the members of his family and the answer to the question will depend on whether the remuneration or profit was earned with the help of joint family assets. [I. T. R., Vol. 37 (1959), page 123] [Supreme Court decision]

In 1934 the Karta of a Hindu undivided family acquired 90 out of 300 shares in a transport company with the funds of the family. There were initially four shareholders including the Karta and two of them were directors. On the death of one of them in 1941, the Karta became a director of the company. On the death of another, who was managing the business of the company, he became the managing director of the company in 1942. All the relevant period he was entitled to a salary and a commission on the net profits of the company. The managing director had control over the financial and administrative affairs of the company and the only qualification under its articles of association was the qualification of a director. Viz., the holding of not less than 25 shares in his own right. The question was whether the managing director's remuneration and commission and sitting fees received by the Karta were assessable as the income of the family :

It was held by the Hon'ble Supreme Court that the shares were acquired by the family not with the object that the Karta should become the managing director but in the ordinary course of investment and there was no real connection between the investment of joint family funds in the purchase of the shares and the appointment of the Karta as managing director of the company. The remuneration of the managing director was not earned by detriment to the joint family assets. The amounts received by the Karta as managing director's remuneration, commission and sitting fees were not assessable as the income of the Hindu undivided family. [I. T. R., Vol. 68 (1968) page 221]

V, who was the Karta of a Hindu undivided family, was a partner of a firm. His contribution to the capital of the firm belonged to the family. Interest was payable on the capital contributed by each partner. Under clause (7) of the deed of partnership the general management and supervision of the partnership business was to be in the hands of V. under clause (16) he was to be paid a monthly remuneration out of the gross earnings of the partnership business. The question was whether the salary received by V was assessable in the hands of the Hindu undivided family. It was found that V was in the partnership as representing the family and he became a partner on account of the investments of the joint family assets in the capital of the partnership and that the remuneration received by V was only an increased share of the profits paid to him as representing the family :

It was held by the majority of the Judges of the Hon'ble Supreme Court by WANCHOO C. J. BACHAWAT, RAMASWAMI and MITTER JJ. (HEGDE J. dissenting) that the remuneration paid by the firm to V was directly related to the investment in the partnership business from the assets of the family. There was real and sufficient connection between the investment from the joint family funds and the remuneration paid to V. the Salary paid to V was, therefore, assessable as the income of the Hindu undivided family. [I. T. R., Vol. 68 (1968) page 365].

Basis of Taxation—For income-tax purposes, a Hindu undivided family is treated as a separate entity and no account is taken of how that income is distributed amongst the individual members when such individual members are assessed to income-tax in respect of their separate income. A member of a Hindu undivided family cannot be called upon, in his individual capacity, to pay any further tax in respect of his share of income or to pay a higher rate of tax by including his share of the family income in his own total income.

This applies even in cases where the amount of the income of the family is below the taxable limit and, therefore, not liable to taxation in the hands of the manager of the family. Conversely, a member of an undivided Hindu family cannot claim a refund of tax on the ground that his own total income including his share of the family income entitles him to a lower rate of taxation than the family.

The minimum exemption limit for income-tax is Rs. 7,000 for a Hindu undivided family having at least 2 members of more than 18 years of age, neither of whom is a lineal descendant of the other.

Whether the present-day facts correspond to the law or not, the law assumes that the normal status of a Hindu undivided family is one of jointness in residence and estate. The law also presumes that the property once joint continues as such until the contrary is proved by a member of the family who claims any advantage for the purpose of tax. If at the time of assessment it is claimed by a member that a partition has taken place among the members of the family the Income-tax Officer shall enquire thereinto and, if he is satisfied, shall assess the total income of the family up to the date of partition. Each member shall then, in addition to any income-tax for which he may separately be liable, be called upon to pay his share of the tax so assessed according to the portion of the family property allotted to him.

(Regarding Residence—see Chapter V § 2 & 3)

Illustration 3

Ajit, Anil and Atul (all major and unmarried) are members of a Hindu undivided family having income from house properties amounting to Rs. 18,000 (for income-tax purposes) during the year ended 31st March, 1970. Ajit works in office at a salary of Rs. 600 per month. Anil has a book-shop, income from which during the year ended 31st March, 1970 amounted to Rs. 1,200. Atul has no other source of income. Calculate the amount of tax payable by the family and the brothers.

ANSWER

Income-tax payable by the family

Income from House Properties		Rs.	18 000
Total Income		Rs.	18,000
Income-tax payable on Rs. 18,000 at the rates ruling in the Assessment year 1970-71			
Rs.	15,000	Rs.	1,600
	3,000 @ 23%		690
		Rs.	2,290
Less : Family Allowance			200
		Rs.	2,090
Special Surcharge @ 10% of Rs. 2,090			209
Total amount payable by the Family		Rs.	2,299

Income-tax payable by Ajit on "Salary" of Rs. 7,200 at the rates ruling in the Assessment year 1970-71.

Rs. 5,000 @ 10%	Rs. 250	
2,200	220	Rs. 470
Less : Personal Allowance		125
		Rs. 345
Special Surcharge @ 10% of Rs. 345 (Rounded off)		35
Total amount payable by Ajit		Rs. 380

Income-tax payable by Anil will be **NIL** as his total income is below the taxable limit of Rs. 4,000

Income-tax payable by Atul will be **NIL** as he has no other source of income.

Illustration 4.

Bibhuti, Bimal and Biren, major brothers of a Hindu undivided family, work in different offices at monthly salaries of Rs. 950, Rs. 575 and Rs. 225 respectively. Their income from ancestral house properties during the year ended 31st March, 1970 amounted to Rs. 5,600 for income-tax purposes. Calculate the amount of tax payable by the family and the brothers. Bibhuti is married having two children. Bimal is married having one child. Biren is unmarried.

ANSWER

Income-tax payable by the family for the Assessment year 1970-71 will be **NIL** as the income from the ancestral properties is below the taxable limit of Rs. 7,000.

Income-tax payable by Bibhuti on "Salary" of Rs. 11,400 at the rate ruling on the Assessment year 1970-71.

Rs. 10,000	Rs. 750	
1,400 @ 17%	238	Rs. 988
Less : Family Allowance		240
		Rs. 748
Special Surcharge @ 10% of Rs. 748 (Rounded off)		75
Total amount payable by Bibhuti		Rs. 823

**Income-tax payable by Bimal on "Salary" of
Rs. 6,900 at the rates ruling in the Assessment year 1970-71.**

Rs. 5,000	Rs. 250	
1,900 (a) 10 %	190	Rs. 440
Less : Family Allowance		220
		Rs. 220
Special Surcharge (a) 10 % of Rs. 220		22
Total amount payable by Bimal		Rs. 242

Income-tax payable by Biren will be NIL as his total income for the year ended 31st March, 1970, i.e., Rs. 2,700 is below the taxable limit of Rs. 4,000.

Revisional Problems—Questions No. 10 and 52

§ 4. Company—Under the income-tax Act, a "company" means (a) any Indian company as defined in the Indian Companies Act, 1956, the registered office of which is situated in India or (b) any Association whether incorporated or not and whether Indian or non-Indian which is declared by general or special order of the Central Board of Direct Taxes to be a company for the purposes of the Act.

The word "company" has been used in the Income-tax Act in a much wider sense and includes any foreign association like the French Societies Anonyms which have many characteristics in common with the companies recognised by the Indian Law. The rules about incorporation of companies outside India may differ, but if a company has been duly registered in accordance with the laws of the country, it is a "company" for the purposes of the Income-tax Act, no matter what the motives of registration were. A company in liquidation is a "company" within the meaning of the Income-tax Act and the Revenue Authorities can call upon the liquidator to submit a return of income and to pay the amount of tax due.

For income-tax purposes, a distinction has been made between the companies in which the public are substantially interested (i.e., public companies) and the companies in which the public are not substantially interested (i.e. controlled companies). The former will include the following :—(a) Companies owned by the Government or at least 40 % of the shares are held by the Government ; (b) Companies in which Equity shares carrying not less than 50 % of the voting power was beneficially held throughout the relevant accounting year by the Government or by a Corporation established by a Central, State or Provincial Act or by the public and such shares were bought and sold in any recognised Stock Exchange and were freely transferable among the public and the affairs of the company were not controlled by five or lesser number of persons. [Section 2 (18)].

In the case of "Controlled Companies", Section 109 provides for a compulsory distribution of profits after payment of normal income-tax to the extent of 90 % in the case of investment companies, and 60 % in the case of other companies. Non-distribution of the statutory percentages will render

the companies to an additional income-tax to the extent of 50% of the distributable income less the amount actually distributed as dividends in the case of investment companies and to the extent of 37% of the distributable income less the amount actually distributed as dividends in the case of trading companies and 25% in the case of other companies. (Section 104).

The Income-tax Officer, in considering whether the payment of a dividend or a larger dividend than that declared by a company would be unreasonable within the meaning of Section 23A (old section) of the Indian Income-tax Act, 1922, does not assess any income to tax. He only does what the directors should have done putting himself in their place. Though the object of the Section is to prevent evasion of tax, the provision must be worked not from the standpoint of the tax-collector but from that of a businessman. The reasonableness or unreasonableness of the amount distributed as dividends is judged by business considerations, such as the previous losses, the present profits, the availability of surplus money and the reasonable requirements of the future and similar others. The Income-tax Officer must take an overall picture of the financial position of the business. He should put himself in the position of a prudent businessman or the director of a company and deal with the problem with a sympathetic and objective approach.

In deciding whether the payment of a dividend or a larger dividend than that declared by the company would be unreasonable, the Income-tax Officer can take into consideration circumstances other than losses and smallness of profit. The statute, by the words used, while making sure that "losses and smallness of profits" are never lost sight of, requires all matters relevant to the question of unreasonableness to be considered. Capital losses, if established, would be one of them.

The words "smallness of profit" in Section 23A (old section) refer to actual accounting profits and not the assessable profits of the year. In arriving at the assessable profits the Income-tax Officer may disallow many expenses actually incurred by the assessee; and in computing his income, he may include many items on notional basis. But the commercial or accounting profits are the actual profits earned by the assessee calculated on commercial principles.

Where the Income-tax Officer takes action under Section 23A (old section) before the tax for the relevant period is assessed, only the estimated tax can be deducted in ascertaining the profits available for distribution; but if the tax has already been assessed before he takes action under that section the actual tax assessed on the income of the company and not the estimated tax or the tax shown in the Balance Sheet should be taken into account.

Though the Balance-Sheet of the company is not final for the purpose of Section 23A (old section) it affords a prima facie proof of the financial position of the company on the date when the dividend was declared. But nothing prevents the parties from establishing by cogent evidence that certain items were, either by mistake or by design, inflated or deflated or that there were some omissions. Nor is the company precluded from proving that the estimate in regard to certain items has turned out to be wrong and placing the actual figures before the Income-tax Officer. [I. T. R. Vol 57 (1965), page 176] [Supreme Court decision].

"Domestic Company" [(Section 80B(2))] means an Indian company or

any non-Indian company which has made the prescribed arrangements for the declaration and payment of dividends within India.

“Industrial Company” (Finance Act, 1970) means a company which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining, income wherefrom is more than 51% of its total income.

“Investment Company” (Section 109) means a company whose total income consists mainly of “Interest on Securities”, “Income from House Property”, “Capital Gains” and “Income from other Sources.”

“Trading Company” (Section 109) means a company whose business consists mainly in dealing in goods or merchandise manufactured, produced, processed by a person other than that company, income wherefrom is more than 51% of its total income.

With effect from the assessment year 1960-61, the company and its shareholders are treated as two different entities for all purposes. With effect from the assessment year 1965-66, the company is assessed in respect of its entire taxable profits at a flat rate of income-tax. The company deducts income-tax at prescribed rates from the amount of dividend at the time of payment. The company then deposits the amount of tax deducted with the government within seven days and issues tax deduction certificates to the shareholders who in their turn deposit the tax deduction certificates along with their returns of income. They are liable to pay income-tax on the basis of their total income including dividend. They will of course get credit for the amount of tax deducted at source on the basis of the tax deduction certificates.

Revisional Problems—Questions No. 29 and 39

(Regarding Residence—see Chapter V § 2 & 3)

§ 5. A Local Authority is defined as “a Municipal Committee, District Board, Body of Port Commissioners or other Authority legally entitled to or entrusted by the Government with the control or management of a Municipal or Local Fund”. It includes Improvement Trusts, Inland Navigation Boards, Water Boards, etc. There cannot be any “Local Authority” outside India within the meaning of the Income-tax Act.

Income arising from a trade or business carried on by any Local Authority outside its territorial jurisdiction in respect of the supply of a commodity or service is liable to income-tax at the prescribed rate. Income from supplying gas, electricity, water, etc. to other Municipalities is taxable, subject to a fair allowance in respect of general supervision and possibly of loan charges, if any.

Bombay Municipal Corporation supplied water outside the city to Government and other persons from the Municipal Water Works situated outside the city on property belonging to the Corporation and the supply was metered at the waterworks. It was held that in supplying water to Government and other persons outside the limits of the city, the Corporation was carrying on a trade or business and as the income arose from the supply of a commodity or service outside its own territorial jurisdiction, it was liable to tax.

§ 6. Firm—The Indian Income-tax Act adopts the definitions of “Firm”.

“Partner” and “Partnership” given in the Indian Partnership Act, 1932 which are as follows :

“Partnership is the relation between persons who have agreed to share the profit of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually “partners”, collectively ‘a Firm’ and the name under which their business is carried on is called the ‘Firm name’.”

Under the Indian Partnership Act, a minor cannot be a member of a firm though he may be admitted, with the consent of all other partners, to the benefits of the partnership. The Income-tax Act provides that the expression “Partner” should include any person who being a minor, has been admitted to the benefits of the partnership.

The following sections of the Indian Partnership Act should also be studied in this connection :

“Section 5. The relation of Partnership arises from contract and not from status ; and, in particular, the members of a Hindu undivided family carrying on a family business as such as a Burmese Buddhist husband and wife carrying on business as such are not partners in such business.”

“Section 6. In determining whether a group of persons is or is not a firm or whether a person is or is not a partner in a firm regard shall be had to the real relation between the parties, as shown by all the relevant facts taken together.”

“Explanation 1.—The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make persons partners.”

“Explanation 2—The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business, and, in particular, the receipt of such share or payment—(a) by a lender of money to persons engaged or about to engage in any business, (b) by a servant or agent as remuneration, (c) by the widow or child of a deceased partner as annuity or, (d) by a previous owner or part owner of the business consideration for the sale of the goodwill or share thereof, does not of itself make the receiver a partner with the persons carrying on the business.”

From a strict legal point of view, a firm is not a legal entity, but for income-tax purpose it is a distinct unit notwithstanding the fact that the partners may also be separately assessed. It should be noted that a firm cannot legally be a partner in another firm, that no partnership can legally be constituted between a Hindu undivided family and a firm and that a partnership cannot be formed between the Karta of Hindu undivided family in his individual capacity and the family. Although a firm as such cannot enter into a contract of partnership because it is not legal entity, there is nothing wrong to bar the individual members of a firm from entering into partnership with other individuals or with the partners of another firm, the contract entered into by the partnership must be regarded as the contract entered into on behalf of all the partners, and that the partner firm is entitled to have its share of loss in the bigger partnership, set off against its profits.

(Regarding Residence—see Chapter V § § 2 & 3)

For income-tax purposes, firms are divided into two categories—registered and unregistered. The main difference in their treatment is that the resident partners of a registered firm are assessed directly in respect of their shares of income. An unregistered firm, on the other hand, is assessed like an individual and the partners are not entitled to claim refunds where their individual rate of tax is lower than that of the firm, nor are the partners taxed a second time in respect of their shares of the profits of firm, but their shares are included in their total income for determining the rate of tax at which they should be taxed on their other income. If, however, an unregistered firm as such pays no tax on the ground that its total income is below the taxable limit, the partners are liable to pay tax on their proportionate shares along with the tax on their other income.

For the first time in 1956-57 registered firms become liable to pay income-tax if their income was more than Rs. 40,000. The limit was reduced to Rs. 10,000 from the assessment year 1970-71. The amount of income-tax payable should be allocated to the partners in proportion to their shares in the accounting period.

(a) Registration of firms (Sections 184 to 186 and Rules 22 to 25)–

An application for registration should be made in the prescribed form available from the income-tax office and must be signed by all the partners. The application, accompanied by an instrument of partnership in duplicate, specifying the individual shares of the partners, should be submitted before the close of the firm's accounting period. When an application is submitted, the Income-tax Officer shall enquire into the genuineness of the firm. If there be any evidence, direct or circumstantial, showing the bogus nature of a so-called instrument of partnership, the Income-tax Officer may refuse registration of the firm in question. Where a partnership consists of a firm and some individuals and the deed of partnership, while mentioning the proportion in which the profits and losses are to be shared between the firm and the other partners respectively, does not specify the shares of the partners of the firm which is a member of the partnership, the partnership cannot be registered. When a partner dies and afterwards an application for registration is made without disclosing the facts of the death of the deceased partner, registration may be refused by the Income-tax Officer.

When the Income-tax Officer is satisfied as to the genuineness of the instrument of partnership, he shall endorse the original with a certificate to the effect that the registration has been allowed and return the deed to the assessee, the duplicate being retained as part of the assessee's record. Registration once granted, is valid up to the end of the financial year in which it is allowed, but can be renewed each year by the Income-tax Officer on an application in the prescribed form accompanied by the certificate signed by all the partners to the effect that the constitution of the firm has not been changed. In the event of the constitution being changed, a fresh partnership deed should be submitted. Registration may be cancelled by the Income-tax Officer if the return of income of the firm is not submitted or evidence called by him is not furnished.

When a firm makes an application under Section 26A (old section) of the Act for registration, the Income-tax Officer can reject the same if he comes to the conclusion that the partnership is not genuine or the instrument of partnership does not specify correctly the individual shares of the partners. But once he comes to the conclusion that the partnership is genuine and a valid one, he cannot refuse registration on the ground that one of the partner is a benamidar

of another. If the partnership is genuine and legal, the share given to the benamidar will be the correct specification of his individual share in the partnership. The beneficial interest in the income pertaining to the share of the said benamidar may have relevance to the matter of assessment, but none in regard to the question of registration. His benami character does not affect the benamidar's capacity as partner or his relationship, with the other members of the partnership. If a partner is only a binamidar for another it can only mean that he is accountable to the real owner for the profits earned by him from and out of the partnership. Therefore, a benamidar is a mere trustee of the real owner and he has no beneficial interest in the property or the business of the real owner. But in law, just as in the case of a trustee, he can also enter into a partnership with others. The benamidar of a partner, *qua* the other partners, has separate and real existence; he is governed by the terms of the partnership deed; his rights and liabilities are governed by the terms of the contract and by the provisions of the Partnership Act; his liability to third parties for the act of the partnership is co-equal with that of the other partners; the other partners have no concern with the real owner, they can only look to him for enforcing their rights or discharging their obligations under the partnership deed. Any internal arrangement between him and another partner is not governed by the terms of the partnership; that arrangement operates only on the profits accruing to the benamidar; it is outside the partnership arrangement. If a benamidar possesses the legal character to enter into a partnership with another, the fact that he is accountable for his profits to, and has the right to be indemnified for his losses by, a third party or even by one of the partners does not disgorge him of the said character.

Different considerations may arise in a case where the partnership is only between two persons of whom one is benamidar of the other and in a case where the benamidar of one partner is taken as a partner with the consent of the other partners. [I. T. R., Vol. 55 (1965), page 652] [Supreme Court decision].

A contract of partnership has no concern with the obligation of the partners to others in respect of their shares of profit in the partnership. It only regulates the rights and liabilities of the partners. A partner may be the Karta of a joint Hindu family; he may be a trustee; he may enter into a sub-partnership with others; he may, under an agreement, express or implied, be the representative of a group of persons; he may be a benamidar for another. In all such cases he occupies a dual position. *Qua* the partnership, the functions in his personal capacity; *qua* the third parties, in his representative capacity. The third parties, whom one of the partners represents, cannot enforce their rights against the other partners nor can the other partners do so against the said third parties. Their right is only to a share in the profits of their partner-representative in accordance with law or in accordance with the terms of the agreement, as the case may be.

A divided member or some of the divided members of an erstwhile joint family can certainly enter into a partnership with third parties under some arrangement among the members of the divided family. Their shares in the partnership depend upon the terms of the partnership; the shares of the members of the divided family in the interest of their representative in the partnership depends upon the terms of the partition deed.

A and B, who were members of a Hindu undivided family, held $7\frac{1}{2}$ as and

2½ as, shares in a firm, the family being beneficially interested in their shares. On a partition in the family, the 10 as shares were divided between the members of the family as follows: A, 2 as; B, 1 anna 4 ps; C and D, minor sons of A, 1 anna each; E, 2 as; F and G, 1 anna 4 ps each. Thereafter a fresh partnership deed was executed in which A and B were again shown as having 7½ as and 2½ as shares in the firm. This deed was registered under Section 26A (old section) of the Indian Income-tax Act, 1922, for the assessment years 1952-53 to 1954-55. In their individual assessment A and B contended that they were liable to pay tax only on their respective shares shown in the partition deed and the Appellate Tribunal upheld their contention. Thereupon the Commissioner, acting under Section 33B (old section) cancelled the registration on the ground that the partnership deed did not specify the correct shares of A and B in the partnership.

It was held by the Hon'ble Supreme Court that the firm was entitled to be registered under Section 26A (old section). The shares given to A and B in the partnership deed were correct according to the terms of the partnership deed although A and B were not liable for the profits pertaining to their shares to the divided members of the family. The partition in the family allotting specific shares to its members might have affected the accountability of the two partners to the other members of the family, but did not affect in any way their relations with the other partners *qua* the partnership or the validity or genuineness of the partnership. Therefore, the Commissioner was wrong in cancelling the registration. [I. T. R. Vol 55 (1965), page 660]

A partnership deed must be construed liberally. If a partnership deed does not make a minor full partner the deed cannot be regarded as invalid on the ground that the guardian has purported to contract on behalf of the minor if the deed acts for the purpose of admitting the minor to the benefits of the partnership. A guardian can accept benefits of partnership on behalf of a minor. He has power to continue the terms on which the benefits are received by the minor. He has also the power to accept new terms on which the benefits of partnership are being conferred. The guardian can do all that is necessary to effectuate the intention of the major members of the benefits of partnership. A guardian is entitled to assent to the mode of keeping accounts. The duration of a partnership has to be fixed between the major members, and the guardian on behalf of the minor may agree to accept the benefits of the partnership only if the duration is to the benefit of the minor. A guardian may on behalf of a minor sever his connection with a firm in which he is admitted to the benefits of the partnership. Where a partnership is for a definite period and the deed enables the members to agree to continue the partnership beyond that period, he is also entitled to refuse to accept the benefits of partnership or agree to accept the benefits of the partnership for a shorter period on terms which are in accordance with law.

It was held by the Hon'ble Supreme Court on the facts that the partnership deed in this case, reasonably construed, only conferred benefits of partnership on the minors and did not make them full partners. Their guardian had agreed to certain clauses in order to effectuate the decision of the major members to confer the benefits of the partnership to the minors. The Income-tax authorities ought not to have declined to register the firm under Section 26A (old section) of the Indian Income-tax Act, 1922, both for the year covered by the main deed and for the next year after the life of the partnership was extended by a supplementary deed. [I. T. R., Vol 57 (1965), page 416].

An order refusing to register a firm is appealable. An order for cancellation of registration shall not be passed unless 14 days' notice has been served on the firm.

(b) Assessment of registered firms (Section 182)—When the total income of a registered firm is computed, it should be allocated amongst the partners in proportion to their shares in the accounting year and included in their total income. In computing the total income of a firm (registered or unregistered), any allowance payable by it in respect of salary, commission, interest, or other remuneration to any of its partners should be excluded. Consequently, the word "Share" means a partner's portion of the profit or loss, as the case may be, increased or decreased by any sums payable to him by the firm as salary, interest, commission or other remuneration. The partners are then directly assessed in respect of their total income and the amount of tax is recovered from them.

Business carried on by a firm is business carried on by the partners. Profit of the firm are profits earned by all the partners in carrying on the business. The share of the partner is business income in his hands for the purpose of Section 10(1) (old section) of the Income-tax Act, 1922, and, being business income, expenditure necessary for the purpose of earning that income and appropriate allowances are deductible therefrom in determining the taxable income of the partner. It was held by the Hon'ble Supreme Court, that the respondent, (Ramiklal Kothari) who was a partner in four firms but did not carry on any independent business, was entitled to deduct from his share of the profits from the firms amounts paid as salary and bonus to staff, expenses for maintenance and depreciation of motor cars and travelling expenses expended by him in earning the income from the firms. [I. T. R., Vol. 74 (1969), page 57].

M, who was a partner in a registered firm (Firm A), entered into a sub-partnership (Firm B) with his two sons and a grandson from December 21, 1949. Clause 5 of the deed of sub-partnership (Firm B) provided that the profits and losses of M in the registered firm (Firm A) shall belong to the sub-partnership (Firm B) and shall be borne and divided in accordance with the shares specified therein but that the capital with its assets and liabilities would belong to M exclusively. The sub-partnership was also registered. For the assessment years 1952-53, 1953-54 and 1955-56, M's share in Firm A was sought to be assessed in the individual assessment of M.

It was held, by the Hon'ble Supreme Court (i) that as M's share in the losses in the registered firm (Firm A) was also to be shared, the right to receive profits and pay losses became an asset of the sub-partnership (Firm B) (ii) that there was an overriding obligation in this case and the income of M in Firm A did not remain his income in spite of the sub-partnership; (iii) that, therefore, M's share of income from Firm A had to be included in the assessment of Firm B and not in M's personal assessment; (iv) that there was nothing in Section 23 (5) (a) (old section) of the Indian Income-tax Act, 1922, which prevented the income from Firm A being treated as the income of Firm B and Section 23 (5) (a) (old section) being applied again.

A sub-partner has definite enforceable rights to claim a share in the profits accrued to or received by the partner in the original partnership. When a sub-partnership is entered into, the partner changes his character vis-a-vis the sub-partners and the income-tax authorities, although other partners in the

original partnership are not affected by the changes that may have taken place. In the case of a sub-partnership the sub-partnership creates a superior title and diverts the income from the main firm before it becomes the income of partner. In other words, the partner in the main firm receives the income not only on his behalf but on behalf of the partners of the sub-partnership.

There is no warrant for the proposition that under Section 23(5) (a) (old section) only the partner of the registered firm can be assessed. The object of Section 23(5) (a) (old section) is not to assess the firm itself but to apportion the income among the various partners. After the income had been apportioned, the Income-tax Officer has to find whether it is the partner who is assessable or whether the income should be taken to be the real income of some other person. If it is the real income of another firm, it is that firm which is liable to be assessed under Section 23(5) (a) (old section). [I. T. R., Vol. 62(1966), page 323].

For the first time in 1956-57, registered firms became liable to pay income-tax if their income was more than Rs. 40,000. The limit was reduced to Rs. 10,000 from the assessment year 1970-71. With effect from the assessment year 1965-66, registered firms became liable to pay surcharge on income-tax at the rate of (1) 10% of the amount of income-tax payable by the firm if 51% of its income is derived from any profession, and (2) 20% of the amount of income-tax payable by the firm in all other cases. A Special Surcharge at the rate of 10% of the amount of income-tax and surcharge on income-tax was imposed in the assessment year 1966-67. With effect from the assessment year 1969-70 the amount of income-tax, surcharge on income-tax and special surcharge payable by the firm should be deducted from the total income of the firm and thereafter the balance should be allocated to the partners in proportion to their shares in the accounting period. To secure prompt payment of tax by a partner, registered firms have been empowered to retain out of their profits 30% of the share of each partner until such time as the partner pays the tax.

A, B, C and D were the four partners of a firm. A represented his Hindu undivided family and his share was 8 annas. The firm was registered under Section 26A (old section) of the Indian Income-tax, 1922, and for the assessment year 1944-45 to 1947-48 the assessments were made in accordance with Section 23(5)(a) (old section). The share of A from the income of the firm was added to the other income of the family and the family was assessed to tax on its total income. The tax liability attributable to the share of A for these years was not satisfied. On October 3, 1962 the Income-tax Officer served on D demand notices for the tax attributable to A's share remaining unpaid by A. D thereupon moved the High Court for a writ of *certiorari* quashing the notices of demand and for an order directing the Officer to withdraw the notices. The High Court allowed D's petition. On appeal to the Supreme Court, it was held, affirming the decision of the High Court, that the tax liability attributable to A's share of income of the firm could not be recovered from D. Undoubtedly contractual obligations of a firm are enforceable jointly and severally against the partners. But the liability to pay income-tax is statutory; it does not arise out of any contract, and its incidence must be determined by the statute. If the statute which imposes liability has not made it enforceable jointly and severally against the partners, no such implication can arise merely because contractual liabilities of a firm may be jointly and severally enforced against the partners. Where under the scheme of the Act, tax is assessed individually against each partner and no tax is made payable by the firm, the principle of joint and several liability under Section 44 (old section)

has no application. There is nothing in Section 44 (old section) which supports the contention that for payment of tax assessed against a partner of a registered firm under Section 23 (5) (a) (old section) another partner becomes liable jointly and severally with the first partner to pay tax. Where the assessment is made under Section 23 (5) (a) (old section) of a registered firm and the income of each individual partner is assessed, the partners do not become jointly and severally liable to pay the aggregate amount of tax attributable to their various shares in their individual assessment [I. T. R., Vol. 66(1967), page 590].

Where there has been a change in the constitution of a firm or its has been newly constituted, the assessment should be made on the firm as it is constituted on the date of assessment and the partners who are entitled to receive the profits of the previous year should be assessed in respect of their proportionate share of profits. Consequently, the total income of the firm should be allocated amongst those who were partners in the previous year (i.e., the accounting year) in proportion to their shares in such previous year. If for any reason, tax thus assessed on any partner cannot be recovered from him, it shall be recovered from the firm as constituted at the time of making the assessment.

In computing the total income of the firm, losses under one head can be set off against profits from any other head. In the event of a loss still remaining, it shall be apportioned among the partners who were entitled to share the profits and losses of the firm in the accounting year in the proportion in which they were entitled to share profits and losses and should, under no circumstances, be carried forward to be set off against the income of the firm itself in the following year. Where a previous partner has given up his share in a firm owing to a change in the constitution or is dead, only his successor by inheritance is entitled to carry forward losses allocated to him by the firm. No other person, including his successor in the firm, can claim to set off the loss against his income.

In the case of a registered firm if full effect cannot be given to any depreciation allowance in any past year then the carried forward unabsorbed depreciation becomes depreciation of the current year in the hands of the partners. If one of such partners is carrying on no other business such partner can necessarily set off the unabsorbed depreciation against income under other heads. In the language of Section 10 (2) (vi), proviso (b) (old section), is implicit the intention of the legislature that effect can be given to a depreciation allowance in the assessment of a partner. In such a case set off is permitted under Section 24 (1) (old section) and recourse to Section 24 (2) (old section) is unnecessary. In that view, even the condition prescribed in clause (ii) of sub-section (2) of Section 24, (old section) that the business, profession or vocation in which the loss was originally sustained should continue to be carried on, may also not be necessary because carry forward of depreciation is not covered by Section 24 (2) (old section) [I. T. R., Vol 75 (1970), page 1] [Delhi High Court decision].

(c) Assessment of unregistered firms (Section 183)—The method of assessment of an unregistered firm differs from that of a registered firm in that it is made on the firm direct in the same manner as an individual, on the total income and the amount of tax levied at the appropriate rate is recoverable from it direct. Each partner's share (as explained previously) is then included in his total income for determining the rate of tax applicable to his other income, but he is not taxed a second time in respect of his share in the profits of the firm. If, however, the total income of the firm is below the taxable limit and no tax is

paid by it, then the partners will be liable to pay tax in respect of their proportionate shares. [Section 86(iii)]

Where the total income of the partners is much higher than that of the firm, it is advantageous for the partners to keep the firm unregistered. In order to put an end to this practice, the Income-tax Officers are authorised to treat the firm as registered and make the assessment on the partners directly, if in his opinion the treatment as a registered firm would be to the benefit of the Government. The option is one-sided and while the firm cannot claim to be treated as registered except by registering itself, the Income-tax Officer can, at his option, treat it as registered if it would be more advantageous to the Revenue.

In the case of an unregistered firm, losses can be set off only against the profits of the firm. In the event of a business loss still remaining, it shall be carried forward to be set off against the business income of the firm itself in the following year. In the case of an unregistered firm, treated by the Income-tax Officer as a registered one and assessed as such, losses can be carried forward and set off in the same manner as a registered firm.

Illustration 5.

Debabrata, Dhononjoy and Durgadas have been actively carrying on business in partnership as wholesale hardware dealers and sharing profits in the proportion of 7/15, 5/15, and 3/15 respectively. Net profit of the firm for the year ended 31st March, 1970 amounted to Rs. 30,000 after charging partner's salary of Rs. 4,800 (Debabrata Rs. 2,400 and Dhononjoy Rs. 2,400) and interest on capital of Rs. 5,200 (Debabrata Rs. 1,800, Dhononjoy Rs. 1,400 and Durgadas Rs. 2,000). Compute the total income of the firm and allocate it amongst the partners.

ANSWER

Computation of total income of the firm for the year ended 31st March, 1970

Profit allocated to partners :

Debabrata	Rs.	14,000	
Dhononjoy		10,000	
Durgadas		6,000	Rs. 30,000
<hr/>			

Add : Salary paid to partners :

Debabrata	Rs.	2,400	
Dhononjoy		2,400	4,800
<hr/>			

Interest paid to partners :

Debabrata	Rs.	1,800	
Dhononjoy		1,400	
Durgadas		2,000	5,200
<hr/>			

Total income of the firm for income-tax purposes :

Rs. 40,000

Allocation to Partners :

	Debabrata	Dhononjoy	Durgadas		Total
Salary	Rs. 2,400	Rs. 2,400	Rs. —	Rs.	4,800
Interest	1,800	1,400	2,000		5,200
Balance	14,000	10,000	6,000		30,000
	<u>Rs. 18,200</u>	<u>Rs. 13,800</u>	<u>Rs. 8,000</u>	<u>Rs.</u>	<u>40,000</u>

(For calculation of tax see Illustration 37)

Illustration 6.

Amar, Bagala and Chandi are active partners in a firm, the net loss of which for the year ended 31st March, 1970 amounted to Rs. 6,000. The partnership deed provided for payment of salaries of Rs. 5,000 to Amar and Rs. 4,000 to Bagala, and of interest on capital of Rs. 1,000 to Amar, Rs. 1,500 to Bagala and Rs. 2,000 to Chandi, the balance of the profit or loss being divisible in the proportion of 10% to Amar, 10% to Bagala and 80% to Chandi. Compute the total income of the firm and allocate it amongst the partners.

ANSWER**Computation of total income of the firm for the year ended 31st March, 1970**

Net loss for the year allocated to the partners :

Amar	Rs. 600		
Bagala	600		
Chandi	4,800	Rs.	6,000

Add: Salary paid to partners :

Amar	Rs. 5,000		
Bagala	4,000	Rs.	9,000

Interest paid to partners :

Amar	Rs. 1,000		
Bagala	1,500		
Chandi	2,000	4,500	13,500

Total income of the firm for income-tax purposes : Rs. 7,500

Allocation to Partners :

	Amar	Bagala	Chandi	Total
Salary	Rs. 5,000	Rs. 4,000	Rs. —	Rs. 9,000
Interest	1,000	1,500	2,000	4,500
Balance	600 Loss	600 Loss	4,800 Loss	6,000 Loss
	<u>Rs. 5,400</u>	<u>Rs. 4,900</u>	<u>Rs. 2,800 Loss</u>	<u>Rs. 7,500</u>

(For calculation of tax see Illustration 38)

Illustration 7.

Diptish, Fatick and Hemanta are partners in a firm of cloth dealers, the net loss of which for the year ended 31st March, 1970 amounted to Rs. 20,000. The following amounts were passed through the Accounts—Salary paid to Diptish and Fatick Rs. 3,000 each; interest on capital paid to Diptish Rs. 3,000 to Fatick Rs. 2,500 and to Hemanta Rs. 2,000. The balance of the Profit or Loss is divisible in the proportion of Diptish 50%, Fatick 35% and Hemanta 15%. Compute the total income of the firm and allocate it amongst the partners.

ANSWER**Computation of total income of the firm for the year ended 31st March, 1970**

Net loss for the year allocated to the partners :

Diptish	Rs. 10,000	
Fatick	7,000	
Hemanta	3,000	Rs. 20,000

Less : Salary paid to partners :

Diptish	Rs. 3,000	
Fatick	3,000	Rs. 6,000

Interest paid to partners :

Diptish	Rs. 3,000	
Fatick	2,500	
Hemanta	2,000	7,500
		13,500

Total loss of the firm for income-tax purposes : Rs. 6,500

Allocation to Partners :

	Diptish	Fatick	Hemanta	Total
Salary	Rs. 3,000	Rs. 3,000	Rs. —	Rs. 6,000
Interest	3,000	2,500	2,000	7,500
Balance	10,000 Loss	7,000 Loss	3,000 Loss	20,000 Loss
	Rs. 4,000 Loss	Rs. 1,500 Loss	Rs. 1,000 Loss	Rs. 6,500 Loss

(For calculation of tax see Illustration 39)

Illustration 8.

Indu, Jiban and Kali share profits in the proportion of $\frac{1}{2}$, $\frac{1}{4}$ and $\frac{1}{8}$ respectively. Kali ceased to be a partner on the 1st October, 1969 and the other partners continued the business without changing their proportions of sharing profits. Net profit of the firm for the year ended 31st March, 1970 amounted to Rs. 24,000 after charging salary of Rs. 3,600 to Indu, Rs. 3,000 to Jiban and Rs. 1,500 to Kali and interest on capital of Rs. 1,400 to Indu, Rs. 1,000 to Jiban and Rs. 500 to Kali. Compute the total income of the firm and allocate it amongst the partners.

ANSWER**Computation of total income of the firm for the year ended 31st March, 1970**

Net profit for the year allocated to the partners :

Indu	7/12	Rs. 14,000	
Jiban	7/24	7,000	
Kali	1/8	3,000	Rs. 24,000

Add : Salary paid to partners :

Indu	Rs. 3,600	
Jiban	3,000	
Kali	1,500	8,100

Interest paid to partners :

Indu	Rs. 1,400	
Jiban	1,000	
Kali	500	2,900

Total income of the firm for income-tax purposes : Rs. 35,000

Allocation to Partners :

	Profit	Salary	Interest	Total
Indu—(1/2 of 1/2) plus (2/3 of 1/2)	Rs. 14,000	Rs. 3,600	Rs. 1,400	Rs. 19,000
Jiban—(1/4 of 1/2) plus (1/3 of 1/2)	7,000	3,000	1,000	11,000
Kali—(1/4 of 1/2)	3,000	1,500	500	5,000
	<u>Rs. 24,000</u>	<u>Rs. 8,100</u>	<u>Rs. 2,900</u>	<u>Rs. 35,000</u>

(For calculation of tax see Illustration 40)

Illustration 9.

Lakshmi, Manick and Narayan are active partners in a firm, the net profit of which for the year ended 31st March, 1970 amounted to Rs. 30,000. The partnership deed provides for payment of salaries of Rs. 6,000 to Lakshmi, Rs. 4,500 to Manick and interest on capital of Rs. 1,000 to Lakshmi, Rs. 1,500 to Manick and Rs. 2,000 to Narayan, the balance being divisible in the proportion of 20%, 20% and 60% respectively. Compute the total income of the firm and allocate it amongst the partners.

ANSWER**Computation of total income of the firm for the year ended 31st March, 1970**

Net profit for the year allocated to the partners :

Lakshmi	Rs. 6,000	
Manick	6,000	
Narayan	18,000	Rs. 30,000

Add : Salary paid to partners:

Lakshmi	Rs. 6,000	
Manick	4,500	10,500

Interest paid to partners :

Lakshmi	Rs. 1,000	
Manick	1,500	
Narayan	2,000	4,500

Total of income of the firm for income-tax purposes :

Rs. 45,000

Allocation to Partners :

	Profit	Salary	Interest	Total
Lakshmi	Rs. 6,000	Rs. 6,000	Rs. 1,000	Rs. 13,000
Manick	6,000	4,500	1,500	12,000
Narayan	18,000	—	2,000	20,000
	<u>Rs. 30,000</u>	<u>Rs. 10,500</u>	<u>Rs. 4,500</u>	<u>Rs. 45,000</u>

(For calculation of tax see Illustration 41)

Illustration 10.

Santi, Suren and Sachin are active partners of Avenue Cloth Store, sharing profits in the ratio of 20%, 30% and 50% respectively. From the following particulars compute the total income of the firm for the year ended 31st March, 1970 and allocate it amongst the partners.

AVENUE CLOTH STORE

Profit and Loss Account for the year ended 31st March, 1970

To Salary paid to				By profit from		
Santi	Rs.	6,000		sale of cloth	Rs.	50,000
Suren		4,800				
Sachin		3,000	Rs. 13,800	.. Dividend on Rupee		
.. Interest paid to	-----			shares after deduc-		
Santi	Rs.	2,000		tion of tax @ 20 %		4,000
Suren		1,500				
Sachin		1,200	4,700	.. Profit from sale of		
.. Commission paid to	-----			"Short-term capital		
Santi			1,500	asset"		15,000
.. Net Profit allocated to :				.. Profit from sale of		
Santi 20%	Rs.	13,800		"Long-term capital		
Suren 30%		20,700		asset" comprising		
Sachin 50%		34,500	69,000	of Shares		20,000
			Rs. 89,000			Rs. 89,000

ANSWER

Computation of total income of the firm for the year ended 31st March, 1970

		Allocation to Partners		
		Santi	Suren	Sachin
Net Profit as per P. & L A/c.	Rs. 69,000			
Less : Dividends to be considered separately	4,000			
	Rs. 65,000			
Less : Profit from sale of "Short-term capital asset" to be considered separately	15,000			
	Rs. 50,000			
Less : Profit from sale of "long-term capital assets" comprising of shares to be considered separately	20,000			
Cloth Business Profit	Rs. 30,000	Rs. 6,000	Rs. 9,000	Rs. 15,000
Add : Salary paid	13,800	6,000	4,800	3,000
Interest paid	4,700	2,000	1,500	1,200
Commission paid	1,500	1,500	—	—
Cloth Business Profit	Rs. 50,000	Rs. 15,500	Rs. 15,300	Rs. 19,200
Rupee Dividends (Gross)	4,000	800	1,200	2,000
See Note (2)				
Profit from sale of "Short-term capital asset"	15,000	3,000	4,500	7,500
Carried over	Rs. 69,000	Rs. 19,300	Rs. 21,000	Rs. 28,700

		Santi	Suren	Sachin
Brought forward	Rs. 69,000	Rs. 19,300	Rs. 21,000	Rs. 28,700
Profit from Sale of "Long-term capital asset" comprising of Shares See Note (3)	5,250	1,050	1,575	2,625
Total income	Rs. 74,250	Rs. 20,350	Rs. 22,575	Rs. 31,325
Tax deducted at source	Rs. 1,000	Rs. 200	Rs. 300	Rs. 500

Notes. (1) The Gross Dividend has been calculated as follows :

$$\begin{array}{rcl} \text{Net Dividend} & = & \text{Rs. 4,000} \\ \text{1—Rate of tax} & 1 - \frac{20}{100} & = \text{Rs. } \frac{4,000 \times 100}{80} = \text{Rs. 5,000} \end{array}$$

(2) Rupee Dividends (Gross)	Rs. 5,000
Less : Exempted (Section 80L)	1,000
	Rs. 4,000

(3) Profit arising from Sale of Long-term Capital asset Comprising of Shares (Section 80 T)	Rs. 20,000
Less : 100% of Rs. 5,000	Rs. 5,000
65% of 15,000	9,750
	14,750
	Rs. 5,250

Revisional Problems

Questions Nos 11, 12, 13, 14, 24, 27, 28, 38, 41 and 47

§ 7. **Association of persons**—The expression means associations or bodies of individuals, companies, firms and other bodies of individuals whether incorporated or not, the common generic qualities being joint interest and the right to sue and the liability to be sued as an association. When the resources of a number of individuals are pooled together and one business is carried on by the combined resources, then the unit is assessed as an association of persons even if some of the individuals are minors and the business is carried on by their guardians. The expression includes Co-owners, Chambers of Commerce, Clubs, Co-operative Societies, Mutual Benefit Societies, Mutual Insurance Companies etc.

Where income is received by joint owners of an asset (immovable or movable), the question whether they should be assessed as separate individuals in respect of their respective shares in the income or as an association of persons in respect of the entire income depends on whether those persons have earned the income by reason of their association or have done any joint act in respect of the asset which has resulted in, or helped to produce, the income. The mere fact that they have received the income jointly is not sufficient to make them liable to be assessed as an association of persons. [I. T. R., Vol. 30 (1956), page 320]. [Bombay High Court decision]

Under the Mohammedan law, the death of an individual vests his estate in his heirs in definite and ascertained shares to be computed in accordance with the personal law governing them (Hanafi law or Shia law). The co-heirs of a deceased Mohammedan are merely co-owners of a common estate, each with a specific, defined and ascertained share. Of course, these heirs take the property subject to various charges being paid out, like debts, funeral expenses, etc. It is now settled law that mere co-ownership is not sufficient to justify an assessment by the department, treating the co-owners as an association of persons. This co-ownership is not destroyed even if it so happens that the management of the joint undivided estate is entrusted to the care of a manager by a court or if the properties vest in *custodia legis* by reason of the appointment of the receiver. But there is nothing impracticable for co-owners or for co-heirs to attract the characteristics of an association of persons under the Indian Income-tax Act if the facts and circumstances of the case so warrant. An association of persons is a unit of assessment under the Indian Income-tax Act. The precise meaning of the expression has come up for consideration on several occasions before the courts. The word "association" indicates plainly the voluntary combination for a common endeavour and not a mere legal status resulting from operation of law. Co-owners, co-heirs or co-legatees do not constitute such association in respect of the income of the joint or common asset by reason only of their jural relationship. But if they unite themselves with the objective of earning income, they constitute an association of persons for assessment purposes and they cannot take advantage of their legal position to resist assessment on that basis. The essential criterion that attracts the label of "association of persons" in the Income-tax department is the unity of the income-making purpose rather than the unity of title in the income-yielding asset. [I. T. R., Vol 49 (1963), page 46]. [Madras High Court decision]

The founder of a private temple died and his descendants, the assesseees carried on the worship of the temple and divided the offerings made by persons visiting the temple in certain defined shares adopting the *vara* system. Under this system a certain number of days were allotted to each of them in turn corresponding to the shares held by them to officiate as purohits and appropriate the day's offerings to the deity. All of them officiated jointly as purohits on festival days and divided the total offerings of the day according to their shares. The question being whether the assesseees should be assessed as "an association of persons" in respect of the entire income by way of offerings or each of them should be assessed separately in respect of the share of the offerings received by him. It was held by the Hon'ble Gujrat High Court that even though the offerings were made to the temple by the public voluntarily and not in consequence of any effort on the part of the assesseees, as the assesseees looked after the temple and attended to the puja, etc. of the temple not with a purely spiritual motive but with the common object of collecting the offerings and sharing them, they acted with the common object of earning income and they formed an "association of persons" within the meaning of the Income-tax Act and should be assessed as such in respect of the total offerings received by them during the year including the offerings received by each of them separately on non-festival days. [I. T. R., Vol. 58 (1965), page 675].

An association of persons is assessed in the same manner as an individual on its total income and the amount of tax levied at the appropriate rate is recoverable for the association direct. Members of an "association of persons" are exempt from tax a second time, in their hands, of their share of profits receivable by them if the profits have been taxed in the hands of the association. Their shares are of course included in their total income for determining the rate of tax at which they should be taxed in respect of

their other income. Similarly, they cannot claim a refund where their individual rate of tax is lower than that of the association. Where, however, the association does not pay any tax on the ground that its total income is below the taxable limit, the members are liable to pay tax on their proportionate share along with the amount of tax payable in respect of their other income. [Section 86(v)]

(Regarding Residence—see Chapter V § 2 & 3)

(a) Co-owners—There was much conflict of judicial opinion as to whether co-owners of properties are to be assessed as association of individuals. The conflict has since been remedied and the law at the moment stands as follows :

“Where property consisting of buildings or buildings and lands appurtenant thereto is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons but the share of each such person in the income from the property as computed in accordance with Section 22 to 25 shall be included in his total income”. (Section 26)

(b) Chambers of Commerce, Trade Associations etc.—The income of a Chamber of Commerce, Trade Association from admission fees and annual subscriptions of members are not taxable. But if it performs any specific services for its members for remuneration, then it shall be deemed to carry on business in respect of those services and the profits and gains therefrom shall be liable to tax.

The rules of a Stock Brokers' Association provided a definite scheme for allowing members to employ authorised clerks and for the admission, registration, conduct, control and supervision of the authorised clerks for the benefits primarily of the members who employed them and received from the members an annual fee of Rs. 100 for the admission of each authorised clerk. It was held, under the circumstances, that the income received by the association by way of fees, was remuneration definitely related to specific services performed by the association for its members and as such assessable to income-tax.

A Chamber of Commerce registered without the words “Limited” under Section 25 of the Companies Act, 1956 is assessable to income-tax at the rates applicable to a company.

The assessee (Bellary District Mine Owners' Association Ltd.), an association formed to promote the interests of the mine owners of a district, entered into a contract with the State Trading Corporation of India for sale to the latter of 1,10,000 tons of iron ore. The contracted quantity was distributed amongst such of the members of association who were holding licenses and who availed themselves of the contract, in proportion to the royalties paid by them, and the assessee collected from such members a sum of Re. 1 per ton of iron ore sold by them. The assessee claimed that the amount thus collected during the accounting year viz., Rs. 86,859 was not assessable to income-tax. It was held by the Hon'ble Mysore High Court that as there was nothing to show that all the members of the association were entitled to, and did participate, in the contract, the sum of Re. 1 per ton collected from those who participated in the contract with remuneration received for performing specific services for its members within the meaning

of Section 10 (6) (old section) of the Indian Income-tax Act, 1922, and was assessable to income-tax as profits from business.

A trade association is not the same thing as a trading association. A trade association means an association of tradesmen or businessmen for the protection or advancement of their common interests. [I. T. R., Vol. 53 (1964), page 632]

(c) Clubs—The income derived by a club or society from its members is not liable to tax. But income derived from persons other than members of the club in the shape of gate-money, sale of liquor etc., is liable to tax even if the surplus is not distributed amongst the members. Surplus arising from members' club, whether incorporated or not, which merely provide social, sporting or other amenities to the members is not taxable.

(d) Co-operative Societies (Section 80P) : With effect from the assessment year 1968-69 the entire income of the following categories of Co-operative Societies has been excluded from the computation of gross total income : (i) Societies carrying on the business of banking or providing credit facilities to its members, or carrying on a cottage industry or the marketing of the agricultural produce of its members or the purchase of agricultural implements, seeds, live-stock or other articles intended for agriculture for the purpose of supplying them to its members, or the processing, without the aid of power, of the agricultural produce of its members. (ii) Societies being primary societies, engaged in supplying milk raised by its members to a federal milk Co-operative Society. (iii) In respect of any income derived by the Society from the letting of godowns or ware-houses for storage, processing or facilitating the marketing of commodities. (iv) In respect of interest or dividends derived by the Society from its investments with any other Society. (v) In respect of interest on securities and income from House Properties in the case of Societies other than a Housing Society, an Urban Consumers' Society or a Society carrying on transport business or a Society engaged in the performance of any manufacturing operations with the aid of power where the gross total income does not exceed Rs. 20,000.

Dividends from Co-operative Societies (Section 80Q) : Dividends paid out of the exempted profits of Co-operative Societies should also be excluded from the computation of gross total income of the shareholders from the assessment year 1968-69.

(e) Mutual benefit Societies and Mutual Insurance Companies—The income of a mutual benefits society derived solely from interest on overdue subscriptions and on loans to its members is not taxable. But interest derived from Government Securities or other investments is assessable. The income of a mutual insurance company derived from its members is also exempt on this principle. But the companies carrying on business of dividing society insurance where shareholders and policyholders are not the same, are not mutual societies and as such their income is taxable. The law has since been amended and the income of a mutual insurance business is now liable to tax. (See Section 45 and First Schedule to the Act).

§ 8. Artificial Juridical Person—Amar creates a trust comprising of house properties in favour of a "deity". The "deity" will be the owner in such circumstances of those properties. The income from such properties will be assessed in the hands of the "deity" as an artificial juridical person. The assessment will be made on the "shebait" as manager of the deity at the rates applicable to an "unmarried individual". (Vide Chapter XVI § 1).

CHAPTER VII

HEADS OF INCOME—SALARIES (SECTIONS 15 to 17)

§ 1. **Income assessable under this head**—The following categories of income are assessable as “Salaries”—salaries, wages, annuities, pensions, gratuities, fees, commissions, perquisites, and share of profit in lieu of salary. “Salary” signifies a consideration for services of a higher class, whereas “wage” is confined to the earnings of labourers and artisans. It connotes a relationship of employer and employed, principal and agent or some similar relation. An “Annuity” is a yearly payment of a certain sum of money for life or for a stated number of years. It means yearly payments in the nature of income (i.e., annuities periodically paid by the employer) as distinguished from annual payments of a capital amount in yearly instalments which are apparently not taxable. Annuities payable by any one other than an employer (i.e., under a Will) are assessable as “Income from Other Sources” and are not subject to deduction of income-tax at source. “Pension” is a compensation for past service, usually paid periodically. Commuted value of pension is, of course, not taxable. “Gratuity” also is paid in consideration of past service, usually paid in lump sum. “Fees” denote fluctuating payments depending on the work done as distinguished from salaries which are fixed in relation to a period of time. Fees paid to Government pleaders are not salaries but professional earnings. “Commission” denotes payments being percentage on amounts involved.

Honoraria or fees paid to Government servants by local bodies or private persons for professional work, whole of which in the first instance is credited to Government after which the whole or part is drawn under proper sanction by the Government servant concerned, should be taxed as salary. They are obviously fees, commissions, or perquisites received in addition to salary. Rewards for passing examinations are not liable to tax unless by the conditions of his employment the assessee is compelled to pass the examinations. Such rewards granted to officials for passing compulsory examination are distinguishable from grants made to assist candidates to meet the expenses for preparing for such examination. These tuition grants are not liable to tax even if they are paid to successful candidates only. The so-called “Rewards” paid to Military Officers and other ranks for passing compulsory language examination are all to be treated as tuition grants and not as rewards and, therefore, are not liable to tax.

Compensation receivable by an assessee from his employer or former employer in connection with the termination of his employment or modification of the terms and conditions of employment is taxable as salary. A payment due to an employee from an unrecognised Provident Fund which represent the employer's contribution and interest thereon, is taxable as salary. But a payment due to an employee from a recognised Provident Fund or Super-annuation Fund is exempt from taxation.

Death-cum-retirement gratuity received under the pension rules of the Central Government, a State Government, a Local Authority or a Statutory Corporation or of the Defence Services are exempt from tax. This benefit of exemption from tax has also been extended to persons in private employment to the extent of 15 months' average salary or Rs. 24,000 whichever is less.

Under Departmental instructions, salary means the periodical payments made to the employee as remuneration for his services (i.e., basic salary). Any payments made to him by way of allowances or perquisites, or any payment

in the nature of amenity, benefit or bonus should not, therefore, be taken into consideration as "Salary" for the purpose of calculating the amount of exemption. "Each year of completed service" means a period or periods of twelve months' service rendered by the employee reckoned from the date on which he commenced service with his employer. "Three years" means three "Calendar years" (commencing from the 1st day of January and ending on the 31st day of December) immediately preceding the "Calendar year" in which the gratuity is paid to the employee. **Revisional Problems—Questions No 8 and 9.**

S's father was the treasurer of a bank until his death. After the death of the father, S was appointed treasurer of the bank at various branches on a monthly salary. Properties of the Hindu undivided family of which he was a member were furnished by him as security. Under the agreement between S and the bank, S was to engage and employ all subordinate staff. He had the power to "control, dismiss and change" his staff at his pleasure but he could not engage or transfer any member of the staff except with the approval of the bank and had to dismiss any such member if so required by the managing director of the bank or the agent of the office. The members of the staff were to be paid salary directly by the bank within the scale laid down by it, anything in excess of the scale being payable by the treasurer. The treasurer was responsible for the acts and omissions of his representatives, whom he was entitled to appoint at the various branches with the approval of the bank, he indemnified the bank against any loss incurred as a result of any neglect or omission on their part. The treasurer and his staff were under the control of the bank.

The treasurer was also responsible for the correctness and genuineness of the hundies and cheques dealt with by the treasurer or the staff; for engaging the necessary staff to look after goods pledged with the bank, and for their good conduct; for enquiring into and reporting on the identity, credit and solvency of persons dealing with the bank; for the correctness and genuineness of the bullion and other valuables pledged with the bank; and for the safe custody of all monies, valuables and securities deposited or pledged with the bank. The agreement could be terminated by three calendar months' notice in writing by either side. In the event of any breach of any condition of the agreement by the treasurer, his services could be terminated forthwith; but this liability was to continue.

It was held by the Hon'ble Supreme Court (i) that, having regard to the nature of his work and the control and supervision of the bank over the treasurer, the treasurer was a servant of the bank; (ii) that, as there was nothing to show that S received any particular training at the expense of the family funds or that his appointment was the result of any outlay or expenditure of or detriment to the family property, the salary of S was not the income of the Hindu undivided family; treasurership of the bank was an employment of personal responsibility and ability and mere ability to furnish a substantial security was not the sole or even the main reason for appointment to such a responsible post; (iii) that, therefore, the emoluments received by S were in the nature of salary and assessable under Section 7 (old section) of the Income-tax Act and not profits and gains of business under Section 10 (old section); and salary was the income of the individual, S, and not the income of the Hindu undivided family. [I. T. R. Vol. 40(1960), page 17].

Salaries payable out of Indian Revenues to Government employees in any part of India and salaries payable by a Local Authority, established in exercise

of the powers of the Central Government, are liable to tax. All servants of Government or such Local Authorities are, therefore, liable to pay tax on their salaries, if they are employed in any part of India and irrespective of their nationality.

Leave salaries and pensions payable outside India in respect of services rendered within India are liable to tax under the head "Salaries". Similarly, Sterling overseas pay which is payable outside India in respect of services rendered in India is liable to Indian income-tax.

Under an agreement the assessee was appointed treasurer and guarantee commission agent of a bank on a remuneration of Rs. 100 per mensem for his work as guarantee commission agent. As treasurer the assessee was put in charge of the cash department. He was responsible for any loss caused to the bank by his conduct or the conduct of the cash department employees, who were employed by him and who were under his control. He had also to make good any loss caused to the bank by the cashing of forged cheques or other such instruments and for payment of money to wrong party. As a guarantee commission agent, the assessee had to recommend to the bank persons who wanted to borrow money and if the bank agreed to lend money to any person recommended, the assessee got a commission. If any approved borrower failed to return to the bank the money advanced, the bank was entitled to recover the debt from the assessee and from the security money deposited by him. The assessee had to bear all expenses in making enquiries about the solvency of the borrowers, the staff for which had to be engaged by him with the approval of the bank's agent. The bank agreed to pay at certain rates the salary of all employees appointed by the assessee as treasurer or guarantee commission agent. The question was whether the work of the assessee as treasurer and guarantee commission agent was service or was partly service and partly business or the whole of it was business.

It was held by the Hon'ble Allahabad High Court that the pay of Rs. 100 per mensem received by the assessee as treasurer of the bank was "salary" received by him as servant of the bank, while the remuneration received by him for the work of guarantee commission agent was income from "business". [I. T. R., Vol. 26(1954), page 489]

By an agreement dated January 2, 1931, the assessee was appointed treasurer of the Allahabad Bank for its branches, sub-agencies and pay offices. He had to perform the duties, liabilities and responsibilities which by custom or contract usually developed upon a treasurer as well as those specified in the agreement. The treasurer had to provide the staff for the cash section of the bank. He had power to suspend, transfer or dismiss any member of the staff and to appoint another person in his place. He was responsible for all acts of the staff so appointed which resulted in loss or damage to the bank. He was also responsible for the protection of the property of the bank and for the receipt of any bad money or base money, coin or bullion or any forged or fraudulently altered currency notes. Whenever so required he had to transmit from one place to another, under such guard as may be provided by the bank, moneys documents and properties of the bank. There was no covenant which expressly or impliedly conferred on the bank control and supervision over the work done by the treasurer. It was open to the treasurer to appoint his own agents to supervise the work of the cash section. The employment of the assessee could be determined at any time by either party giving three months' written notice. In the case of the assessee's death his liabilities and obligations remained in force so as to bind his heirs, representatives and estate for loss already accrued

or incurred and for any future claim until the agreement was determined by his heirs or representatives. The assessee was entitled to monthly allowances subject to a total of Rs. 2,250 per month and Rs. 350 per month for travelling expenses. In the previous year relating to the assessment year 1950-51, the assessee suffered a net loss of Rs. 38,027 in the performance of his duties. The Income-tax Officer refused to set off this loss against the profits of the assessment year 1951-52 on the ground that the remuneration received by him was salary within the meaning of Section 7 (old section) of the Income-tax Act.

It was held by the Hon'ble Supreme Court (i) that an office of treasurer was created by the agreement but the fact that the assessee held an office was not decisive of the question whether remuneration earned by him was as a servant of the bank. Receipt of remuneration for holding an office did not necessarily give rise to the relationship of master and servant between the holder of the office and the person who paid the remuneration. (ii) That the contract was one for service and the treasurer was not a servant of the bank. The remuneration received by him was not salary within the meaning of Section 7 (old section). (iii) That the occupation of the assessee under the agreement was not a profession within the meaning of Section 10 (old section) of the Act for a profession involved occupation requiring purely intellectual or manual skill and the work of the treasurer under the contract could not be so regarded. (iv) That the assessee was following a vocation and his remuneration had to be computed under Section 10 (old section) and the loss of profits suffered in that vocation in any year could be carried forward to the next year to be set off against the profits of the succeeding year. [I. T. R., Vol. 59 (1966), page 699]

§ 2. Perquisites (Section 17).—"Perquisite" means any casual remuneration attached to an office or position in addition to salary or wages. All perquisites receivable in cash by an employee in lieu of or in addition to salary or wages are, therefore, liable to tax unless such perquisites are wholly and necessarily incurred in the performance of the duties. Where perquisites are paid in the nature of specific allowance (e.g., travelling allowance, outfit allowance, washing allowance, etc.) which are reasonable with reference to the nature of the duties performed by the employee and are not disproportionately high compared to the remuneration otherwise receivable by him, the amounts are not taxable. Perquisites in kind other than rent-free residence which are not ordinarily convertible into money were not taxable upto the 31st March, 1955. This practice in effect provided considerable tax-free extra remuneration to highly paid employees. As it was not equitable to grant such exemption from tax, the law was changed with effect from the 1st April, 1955 in terms of which almost all benefits whether convertible into cash or not became taxable.

According to Section 17 (2) "perquisite" includes—

- (1) rent-free accommodation provided to employees;
- (2) accommodation at concessional rent provided to employees;
- (3) discharge of employees' obligations by the employers;
- (4) payments for life insurance or annuities for the employees, by the employers; and
- (5) the value of any benefit or amenity granted or provided to the employee free of cost or at concessional rate, i.e. free-domestic servant, free-gas, free-electricity, free-meals, etc.

Items (1), (2), (3) and (4) apply to all kinds of employee but item

(5) will apply where the employer is a "company" and the employee is a director or a person having substantial interest [Section 2 (32)] in the company or draws an annual cash emoluments of more than Rs. 18,000.

Under Departmental instructions, the following amenities, need not be included in the salary income—(1) provision of ordinary medical facilities to an employee or his family free of charge; (2) reimbursement of such medical expenses incurred by employees; (3) payment of the wages of gardener, sweeper, night watchman etc., employed for the proper upkeep of the house belonging to the employer which is in the occupation of the employee; (4) provision of refreshments during office hours in the office premises (excluding lunch or dinner); (5) provision of recreational facilities for groups of employees.

(a) **Entertainment allowance**—In computing the income from salaries, entertainment allowance was excluded upto the 31st March, 1955. This concession was withdrawn with effect from the 1st April, 1955 in respect of those assessee who were not regularly receiving this allowance prior to that date. The exemption is granted upto 20% of the assessee's remuneration (exclusive of any special allowance, benefit or other perquisite) or Rs. 7,500 whichever is less. If the allowance is increased for any reason, the excess will be taxable in full. If the employee leaves the service of the present employer, the allowance will be taxable in full even if the same amount is received from the new employer. In the case of Government employees, the maximum amount is restricted to Rs. 5,000.

(b) **House-rent allowance**—House-rent allowance forms an addition to the remuneration of an employee, as such it is taxable in full.

With effect from April, 1964, a portion of house-rent allowance has been excluded from the computation of total income. The maximum amount of exclusion shall be the minimum of the following four sums:

- (1) The actual amount of house-rent allowance payable by the employer.
- (2) The excess of the actual house-rent paid by the employee over 10% of his salary.
- (3) 20% of the salary paid by the employer if the residential accommodation is situated in Calcutta, Bombay, Madras, Delhi, Ahmedabad, Bangalore, Hyderabad, Kanpur or Poona and 10% of the salary in other places.
- (4) Rupees three hundred per month.

The term "Salary" for this purpose is the same sum which is taken for calculating Provident Fund contribution by the employee (i.e. Basic Salary and Dearness pay).

Example—Sri Subimal Sen Sharma is employed at Calcutta. His basic salary is Rs. 1,000 and house-rent allowance is Rs. 250 per month. He pays a monthly rent of Rs. 325. Calculate the amount of house-rent allowance which shall be excluded from the computation of his total income for the period April, 1970 to March 1971.

Answer—The minimum of the following four sums shall be excluded from the computation of Sri Subimal Sen Sharma's total income for the period April, 1970 to March, 1971.

- (1) Rs. 250 being the amount of house-rent allowance paid by his employer.
- (2) Rs. 225 being excess of house-rent of Rs. 325 over 10% of his salary i.e. Rs. 100 (Rs. 325 minus Rs. 100).
- (3) Rs. 200 being 20% of his salary of Rs. 1,000.
- (4) Rs. 300 being maximum exempted amount.

The total income of Sri Subimal Sen Sharma for the period April, 1970 to March, 1971 shall be calculated as follows :

Basic salary		Rs. 12,000
House-rent allowance	Rs. 3,000	
Less : Amount exempted	2,400	600
Total income		Rs. 12,600

(c) **Rent-free quarters**—The old practice of computing the monetary value of rent-free quarters at 10% and 12.5% of salary according as the accommodation is unfurnished or furnished is being continued even after the 1st April, 1955 provided that the "fair rent" for the accommodation is not in excess of 20% or 25% respectively. For Calcutta, Bombay and Delhi the corresponding percentages are 30 and 37.5. For accommodation at the tea gardens the corresponding percentages are 7.5 and 9.

"Salary" in this connection includes pay, allowances, bonus or commission payable monthly or otherwise but does not include the following :

- (a) dearness allowance or dearness pay unless it enters into the computation of retirement benefits of the employee ;
- (b) employer's contributions to the provident Fund account of the employee ;
- (c) allowances which are exempt from payment of tax (i.e. tax-free house allowance, tax-free entertainment allowance etc.).

Where Bonus is payable yearly on the basis of annual profit or commission is payable yearly on the basis of annual turnover it is doubtful whether these yearly payments will be included under "salary" but where these yearly payments are effected in terms of service conditions irrespective of the annual profit or annual turnover these yearly payments should be included in the computation of "salary" for the purpose of calculating the monetary value of rent-free quarters.

"Fair rent" in the case of unfurnished quarters should be computed on the basis of actual rent paid or the municipal valuation where the property is owned by the employer. In the case of furnished quarters, the fair rent as explained above, should, in addition, include 10% of the actual cost of the furniture or if the furniture is hired from a third party, the actual hire charges.

Rent-free unfurnished accommodation-- If the Fair rent is below 10% of the occupant's salary as explained above, the occupying employee is taxable on such rent. If the rent is between 10% and 20% of the occupant's salary, the employee will be chargeable to tax on 10% of the salary. If, however, the rent is more than 20% (30% for Calcutta, Bombay and Delhi), then the employee will be charged to tax on 10% of the salary plus on the excess of such rent over 20% or 30% as the case may be, of the salary.

Examples. (1) Salary	Rs. 8,000
Fair Rent	600

Taxable benefit in the hands of the employee will be Rs. 600

(2) Salary	Rs. 8,000
Fair Rent	900

Taxable benefit in the hands of the employee will be 10% of Rs. 8,000 i.e., Rs. 800.

For employees at tea gardens, the taxable benefit will be 7.5% of Rs. 8,000 i.e., Rs. 600.

(3) Salary	Rs. 8,000
Fair Rent	1,800

Taxable benefit in the hands of the employee will be 10% of Rs. 8,000 i.e., Rs. 800 plus Rs. 200 (Rs. 1,800 less 20% of Rs. 8,000) in all Rs. 1,000.

For Calcutta, Bombay and Delhi, the taxable benefit in the hands of the employee will be 10% of Rs. 8,000 i.e., Rs. 800.

For employees at tea gardens, the taxable benefit will be 7.5% of Rs. 8,000 i.e., Rs. 600.

(4) Salary	Rs. 8,000
Fair Rent	2,700

Taxable benefit in the hands of the employee will be 10% of Rs. 8,000 i.e., Rs. 800 plus Rs. 1,100 (Rs. 2,700 less 20% of Rs. 8,000) in all Rs. 1,900.

For Calcutta, Bombay and Delhi, the taxable benefit in the hands of the employee will be 10% of Rs. 8,000 i.e., Rs. 800 plus Rs. 300 (Rs. 2,700 less 30% of Rs. 8,000) in all Rs. 1,100.

For employees at tea gardens, the taxable benefit will be 7.5% of Rs. 8,000 i.e., Rs. 600.

Rent-free furnished accommodation—If the fair rent (including the monetary value of furniture) as explained previously is below 12.5% of the occupant's salary as explained earlier, the occupying employee is taxable on such rent. If the rent is between 12.5% and 25% of the occupant's salary, the employee will be chargeable to tax on 12.5% of the salary. If, however, the rent is more than 25% (37.5% for Calcutta, Bombay and Delhi), then the employee will be charged to tax on 12.5% of the salary plus on the excess of such rent over 25% or 37.5% as the case may be, of the salary.

Examples. (1) Salary	Rs. 8,000
Fair Rent	600
Value of Furniture @ 10%	150

Taxable benefit in the hands of the employee will be Rs. 750.

For employees at tea gardens, the taxable benefit will be 9% of Rs. 8,000 i.e., Rs. 720.

(2) Salary	Rs. 8,000
Fair Rent	900
Value of Furniture @ 10%	200

Taxable benefit in the hands of the employee will be 12.5% of Rs. 8,000 i.e., Rs. 1,000.

For employees at tea gardens, the taxable benefit will be 9% of Rs. 8,000 i.e., Rs. 720.

(3) Salary	Rs. 8,000
Fair Rent	1,800
Value of Furniture @ 10%	300

Taxable benefit in the hands of the employee will be 12·5% of Rs. 8,000 ; i.e., Rs. 1,000 plus Rs. 100 (Rs. 2,100 less 25% of Rs. 8,000) in all Rs. 1,100.

For Calcutta, Bombay and Delhi, the taxable benefit in the hands of the employee will be 12·5% of Rs. 8,000 i.e., Rs. 1,000.

For employees at tea gardens, the taxable benefit will be 9% of Rs. 8,000 i.e., Rs. 720.

(4) Salary	Rs. 8,000
Fair Rent	3,000
Value of Furniture @ 10%	300

Taxable benefit in the hands of the employee will be 12·5% of Rs. 8,000 i.e., Rs. 1,000 plus Rs. 1,300 (Rs. 3,300 less 25% of Rs. 8,000) in all Rs. 2,300.

For Calcutta, Bombay and Delhi, the taxable benefit in the hands of the employee will be 12·5% of Rs. 8,000 i.e., Rs. 1,000 plus Rs. 300 (Rs. 3,300 less 37·5% of Rs. 8,000) in all Rs. 1,300.

For employees at tea gardens, the taxable benefit will be 9% of Rs. 8,000 i.e., Rs. 720.

Where a portion of the rent is borne by the employee, the calculations should be made as follows—

Unfurnished accommodation provided to the employee at Burdwan.

Salary	Rs. 8,000
Fair Rent	1,800
Rent borne by the employee	300

10% of Rs. 8,000	Rs. 800
Fair Rent	Rs. 1,800
Less : 20% of Rs. 8,000	1,600

Rs. 1,000
300

Less : Rent borne by the employee

Taxable benefit in the hands of the employee Rs. 700

Furnished accommodation provided to the employee at Burdwan.

Salary	Rs. 8,000
Fair Rent	1,800
Value of Furniture @ 10%	300
Rent borne by the employee	600

12·5% of Rs. 8,000	Rs. 1,000
Fair Rent	Rs. 1,800
Value of Furniture	300

Rs. 2,100	100
Less : 25% of Rs. 8,000	2,000

Rs. 1,100
600

Less : Rent borne by the employee

Taxable benefit in the hands of the employee Rs. 500

Free or concessional Passage Money—Value of any travel concession or assistance received by an Indian citizen from his employer for himself, wife and children for proceeding on leave to his home district should be excluded from the computation of his total income. In addition, value of any free or concessional passage money received by a non-Indian citizen from his employer for himself, wife and children for proceeding on home leave out of India should also be excluded from the computation of his total income.

Inward passages provided for the purpose of joining duty in India or outward passages provided on termination of service in India should be treated as *ex-gratia* payments in the hands of the employees and not liable to tax. Similarly, where an employee is transferred to or from India from parent company to its subsidiary company or from one company to another of the same group or from Head Office to a Branch in India or from one Foreign Branch to an Indian Branch, the inward or outward passages should be treated as travelling allowance exempt under Section 10.

(e) Conveyance allowance—Where the employee is given a regular monthly allowance, the amount received by the employee should be included in his "Salary" subject to an appropriate deduction for the expenses incurred by him in the performance of his duties.

Where the employee owns the motor car but the actual running and maintenance charges are paid by the employer, a reasonable estimate should be made of the expenses for using the motor car for the employee's private purposes and such amount should be treated as taxable perquisite in the hands of the employee. Where the employer owns the motor car, which he has allotted exclusively for the use of any employee who has to bear the running expenses out of his pocket, the monetary value of the perquisite to the employee should ordinarily be taken (under Departmental instructions) at Rs. 100 per month if the motor car is over 16 H. P. and at Rs. 60 per month if the motor car is 16 H. P. or less. The employee would, of course, be entitled to an appropriate deduction for the expenses incurred by him in the performance of his duties. Where the employer owns the motor car which is allotted for the exclusive use of an employee both for the purpose of his employment and for his private purposes, the expenses for both being borne by the employer, the monetary value of the perquisite to the employee should ordinarily be taken (under Departmental instructions) at Rs. 250 per month if the motor car is over 16 H. P. and at Rs. 150 per month if the motor car is 16 H. P. or less. Where the employer owns the motor car which is maintained by him for the purpose of transporting a number of employees in common (to and from office), the amenity should not be treated as a perquisite in the hands of the employees concerned.

(f) Servant's allowance—Servant's allowance paid in (cash forms) in addition to the remuneration of an employee, as such it is taxable in full. Where an employee drawing an annual cash emoluments of more than Rs. 18,000 is provided with servants whose remuneration is paid by the employer, the monetary value of the perquisite for tax purposes in the hands of the employee should be determined on the basis of remuneration paid to the personal and domestic servants.

Where rent-free or concessional rent accommodation is provided by the employer for the use of employees as also for business visitors and guests, the following domestic services for the upkeep of the accommodation are permissible (under Departmental instructions) without tax liability on the occupant

- (1) House/flats standing in their own compounds—malis, night watchmen and sweepers.
- (2) Flats in Blocks of flats—sweepers.
- (3) Residential-cum-Guest

house accommodation—malis, night watchmen, sweepers and indoor domestic servants appropriate to the size of the guest-house accommodation.

CENTRAL BOARD OF DIRECT TAXES

Notification No. F. N. 40/25/69/I. T.(A. I.) dated 12th January, 1970.

As the gardeners, nightwatchmen and sweepers etc. are provided by the employer primarily for the proper upkeep and maintenance of the property in the occupation of the employer and partly for the benefit of the employees, only a portion of the salaries of these categories of servants, which will represent the benefit accruing to the employees, should be treated as perquisite in their hand. The taxable perquisite in the hands of the employees on account of services of servants provided by the employer will be calculated on the following *ad hoc* basis.

- | | |
|----------------|---|
| (1) Sweeper | 75% of actual wages or Rs. 60/- per month, whichever is less. |
| (2) Gardener } | 50% of actual wages or Rs. 60/- per |
| (3) Watchman } | month, whichever is less. |

(g) Gas, Electricity and Water for household consumption—If the supply is made from the employer's own resources without purchasing from any outside agency, the taxable monetary equivalent will be taken at NIL. Where the supply is purchased for any outside agency, the amount paid by the employer will be taxable in the hands of the employee drawing an annual basic salary of more than Rs. 18,000. Where, however, the gas, electricity and water are consumed partly for household purposes and partly for official duties, the taxable monetary equivalent in the hands of the employee drawing an annual cash emoluments of more than Rs. 18,000 will be either the amount paid by the employer or 6.25% of the salary of the employee, whichever is lower.

(h) Education allowance—All education allowances paid in cash are taxable in the hands of the employees. Where an employer maintains a school for the benefit of the children of his employees, the resulting benefit in the hands of the employee will also be taxable, but employees taking advantage of this facility will not be taxable if their annual cash emoluments is less than Rs. 18,000.

(i) Tax borne by the employer—Tax payable on salary is a primary obligation of the receiving employee. But according to the basis of agreement, an employee may receive tax-free salary (subject to prohibition of the Indian Companies Act, 1956). In such a case, the tax must be borne by the employer and the amount will be treated as an additional perquisite in the hands of the employee. The employee is, therefore, liable to pay further tax on the amount of tax borne by his employer. If that is again borne by the employer, the process goes on *ad infinitum*. Tax-free salary is really, therefore, tax-added income, the employee being credited with the amount of tax constructively paid on his behalf by the employer. (See Illustration 13)

(j) Obligation of an employee discharged by the employer—Where an employer reimburses his employee's hotel bills, club bills, life insurance premia, etc., such payments should be treated as perquisite taxable in full in the hands of the employee even when his annual cash emoluments is less than Rs. 18,000. It is not possible to give an exhaustive list of all benefits and amenities which can be enjoyed by an employee, nor is it possible to lay down any hard and fast

rule regarding the manner in which the value of the benefits in kind should be determined. The nature and the extent of the amenities provided and the locality in which they are provided should also be taken into consideration in determining the value of the perquisite to be taxed in the hands of the recipient.

Perquisites include any sum payable by an employer directly or through an unrecognised provident or super-annuation fund, to effect an assurance on the life of the employee or to effect a contract for an annuity. But contributions made by an employer to provide pensionary or deferred annuity benefits to an employee cannot be taxed in the hands of the employee unless a vested interest therein accrues to the employee in the accounting year. Until an employee attained the age of super-annuation he did not acquire any vested right in the employer's share of contributions towards the pension or the annuity, at best he had a contingent right therein in the earlier years. The taxability can be applied only to such sums in regard to which there was an obligation on the part of the employer to pay and simultaneously a vested right on the part of the employee to claim it could not apply to contingent payments to which the employee had no right till the contingency occurred [I. T. R. Vol 53(1964), page 91] [Supreme Court decision]

(X) Compensation for loss of employment—Payments made solely as compensation for loss of employment and not by way of remuneration for past services were not taxable. This concession was withdrawn with effect from the 1st April, 1955. Since then, whatever may be the basis of the compensation, if it is paid at or in connection with the termination of the employment, it should be treated as profit in lieu of salary and should be included in the total income under "Salaries". It is immaterial whether the compensation is received by the employee as a matter of right or is given voluntarily by the employer. The assessee may, however, apply for relief under Section 89 (1) in respect of the compensation money.

THE INCOME-TAX RULES, 1962.

Rule 3. Valuation of perquisites.—For the purpose of computing the income chargeable under the head "Salaries" the value of the perquisites (not provided for by way of monetary payment to the assessee) mentioned below shall be determined in accordance with the following clauses, namely :—

- (a) The value of rent-free residential accommodation shall ordinarily be estimated at a sum equal to, —
 where the accommodation is not furnished—10 per cent.
 where the accommodation is furnished—12.5 per cent.
 of the salary due to the assessee in respect of the period of his occupation of the said accommodation during the relevant previous year, but
 (i) where the fair rental value of the accommodation is in excess of 25 per cent. (if furnished) or 20 per cent. (if unfurnished) of the employee's salary, the value of the perquisite shall be taken to be 12.5 per cent. or 10 per cent. respectively of the salary increased by a sum equal to the amount by which the fair rental value exceeds 25 per cent. (when accommodation is furnished) or 20 per cent. (when accommodation is unfurnished), of the salary provided that the Income-tax Officer may, having in view the nature of the accommodation, determine the sum by which the 12.5 per cent. or 10 per cent. of the salary, as the case may be, is to be increased, as a percentage (not exceeding 100 per cent.) of the amount by which the fair rental value exceeds 25 per cent. or 20 per cent. of the salary as the case may be ;

(ii) where the assessee claims, and the Income-tax Officer is satisfied, that the sum arrived at on the basis first mentioned exceeds the fair rental value of the accommodation, the value of the perquisite to the assessee shall be limited to such fair rental value.

(b) The value of residential accommodation provided at a concessional rent shall be determined as the sum by which the value computed in accordance with clause (a) as if the accommodations were provided free of rent, exceeds the rent actually payable by the assessee for the period of his occupation during the relevant previous year.

Explanation.—For the purposes of clauses (a) and (b),—

(1) the fair rental value shall be, —

(i) where the accommodation

(a) is provided by Government to a person holding an office or post in connection with the affairs of the Union or of a State, or

(b) is provided by a body or undertaking under the control of Government to any officer of Government whose services have been lent to that body or undertaking, the accommodation itself having been allotted to it by Government

the rent which has been or would have been determined as payable by such person or officer in accordance with the rules framed by Government for allotment of residences to its officers,

(ia) where the accommodation is provided—

(A) by the Reserve Bank of India, or

(B) by a corporation established by a Central, State or Provincial Act or by a company in which all the shares are held (whether singly or taken together) by the Government or the Reserve Bank of India or a Corporation owned by that bank, or

(C) by a body or undertaking including a society registered under the Societies Registration Act, 1860 (21 of 1860), financed wholly or mainly by the Government to any person employed by it, an amount equal to 10 per cent., if the accommodation is unfurnished, and 12·5 per cent., if it is furnished, of the salary due to such person in respect of the period during which the said accommodation was occupied by him during the previous year :

(ib) where the accommodation is provided by a company (not being a company referred to in sub-clause (ia) (B) of this clause) in which not less than forty per cent. of the shares are held (whether singly or taken together) by the Government or the Reserve Bank of India or a Corporation owned by that bank to any officer of Government whose services have been lent to it or to any individual employed by it after his retirement from the service of Government, an amount equal to 10 per cent., if the accommodation is unfurnished and 12·5 per cent., if it is furnished, of the salary due to such officer or individual, as the case may be, in respect of the period during which the said accommodation was occupied by him during the previous year ;

(ii) in any other cases,—

where the accommodation is not furnished, the rent which a similar accommodation would realise in the same locality or the municipal valuation in respect of the accommodation, whichever is higher ; and

where the accommodation is furnished, the fair rental value of the accommodation as if it were not furnished, plus the fair rent for the furniture (including air conditioning equipments and refrigerators), calculated at 10 per cent. per annum on the original cost of the furniture, or if the furniture is hired from a third party, the actual hire charges payable therefor ;

(2) "salary" includes the pay, allowances, bonus or commission payable monthly or otherwise, but does not include the following, namely:—

- (i) dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned ;
- (ii) employer's contributions to the provident fund account of the assessee ;
- (iii) allowances which are exempted from payment of tax.

(c) (i) The value of a motor-car provided by the employer for use by the assessee exclusively for his private or personal purposes shall be determined as the sum actually expended by the employer in the maintenance and running of the motor-car during the relevant previous year (including the normal wear and tear where the motor-car is owned by the employer).

(ii) The value of the motor-car provided for the use of the assessee partly for his personal purposes and partly for business purposes shall be determined to be that part of the sum out of the amount actually expended by the employer in the maintenance and running of the motor-car during the relevant previous year (including the normal wear and tear where the motor-car is owned by the employer) which can reasonably be attributed to the user by the assessee for his private or personal purposes, but where a determination on the basis mentioned above presents difficulty, the value of the perquisite may be determined on the basis provided hereunder :

Value of perquisite per calendar month		
	Where the h.p. rating of the car does not exceed 16 or the cubic capacity of the engine does not exceed 188 litres	Where the h.p. rating of the car exceeds 16 or the cubic capacity of the engine exceeds 188 litres
1. Where the motor-car is owned or hired by the employer and all the expenses of maintenance and running are met or reimbursed to the assessee by the employer.	Rs. 150	Rs. 250
2. Where the motor-car is owned or hired by the employer but the expenses of maintenance and running for his private or personal purposes are met by the assessee from out of his pocket	Rs. 60	Rs. 150

(iii) Where the assessee owns the motor-car but the actual running or maintenance charges are met, or reimbursed to him, by the employer, the value of the perquisite to the assessee shall be determined as the sum actually expended by the employer which in the opinion of the Income-tax Officer can reasonably be attributed to the user of the car by the assessee for his private or personal purposes.

(iv) The value of the free use by the assessee of any other type of conveyance provided by the employer shall be determined as the sum actually expended by the employer in the maintenance and running of the conveyance during the relevant previous year (including normal wear and tear, where the conveyance is owned by the employer) which in the opinion of the Income-tax Officer can reasonably be attributed to the user by the assessee for his private or personal purposes.

(d) The value of the benefit to the assessee resulting from supply of gas, electric energy or water for his household consumption free of any charge shall be determined as the sum equal to the amount paid on that account by the employer to the agency supplying the gas, electric energy or water, but—

(i) where such supply is made from resources owned by the employer without purchasing them from any other outside agency, the value therefor shall be taken as nil, and

(ii) where the Income-tax Officer is satisfied that the gas, electric energy or water supply to any assessee are consumed also for the purposes of his official duties, the Income-tax Officer shall determine the value of the benefit to the assessee to be equal to the amount paid on that account by the employer to the agency supplying the gas, electric energy or water or 6.25 per cent. of the salary of assessee, whichever is lower.

(e) The value of the benefit to the assessee resulting from the provision of free education facilities for any member of his household shall be determined as the sum equal to the amount of the expenditure incurred by the employer in that behalf, but where the educational institution itself is maintained and run by the employer for the benefit of all his employees as a group, the value of the perquisite to the assessee shall be determined with reference to the reasonable cost of such education in a similar institution in or near the locality.

(f) The value of any benefit or amenity resulting from the provision by any undertaking engaged in the carriage of passengers or goods to any employee of the undertaking or to members of his family or his dependent relatives, of journey free of cost or at concessional fares, in any conveyance owned by the undertaking for the purpose of transport of passengers or goods shall be taken as nil.

(g) The value of any benefit or amenity not included in the preceding clauses of this rule shall be determined on such basis and in such amount as the Income-tax Officer considers fair and reasonable.

§ 3. Remuneration of foreign technicians [Section 10 (6) (vii)]—"Technicians" means persons having specialised knowledge and experience in construction or manufacturing operations, in mining or in the generation or distribution of electricity or other forms of power as also industrial or business management

techniques. It is not, however, necessary that the Technician should be actually handling a particular machine or be physically engaged in the particular work in which he is an expert. Even if he is employed as a consultant on matters pertaining to his field of technical knowledge or practical experience, he should be regarded as a Technician.

In the case of Technicians having specialised knowledge and experience in constructional or manufacturing operations or in mining or in the generation or distribution of electricity or other forms of power, the exemption is admissible in respect of "salary" earned for 12 months from the date of arrival in India. This exemption will be extended to 36 months if his contract of service is approved by the Government within one year. If the amount of tax payable on the salary is borne by the employer, then the exemption will continue for a further period of 60 months.

In the case of Technicians having specialised knowledge and experience in industrial or business management techniques, the exemption is admissible in respect of "salary" earned for six months from the date of arrival in India, provided his contract of service is approved by the Government within one year.

In all cases, the technician must be "non-resident" of India in the four financial years preceding the year of arrival.

§ 4. Basis of Liability—Until the Income-tax Amendment Act of 1939, salaries were assessable to tax only when they were 'received' by the assessee. The Amendment Act changed the basis to what is 'due' to the assessee whether paid or 'not'. The word 'due' is intended to refer to the date on which the remuneration becomes payable and has no reference to the period for which it is earned. Salaries earned by Government employees for any month become payable on the 1st day of the month following, as such salary for March, 1969 is 'due' in April, 1969 and is liable to tax in the assessment year 1970-71. On the other hand, salary earned by an employee of a private employer is payable during the month, as such salary for March, 1969 is 'due' in March, 1969 and is liable to tax in the assessment year 1969-70. When any commission is payable to an employee subject to the sanction of the Board of Directors, it is 'due' on the date of sanction irrespective of the period for which it is payable, e.g., if a commission for the year ended 31st December, 1968 is sanctioned on the 1st June, 1969, it becomes 'due' on the 1st June, 1969, and is liable to tax in the assessment year 1970-71.

Advances by way of loan or otherwise of income chargeable under the head "Salaries" will be deemed to be salary 'due' on the date when the advance is received. But it must be distinguished from other classes of advances such as house-building advance, motor car purchase advance, etc. which are in the nature of loans. Any portion of salary withheld under an order of the Court is also liable to tax.

Though salary is now assessable on 'due' basis, the actual collection of tax from the assessee is postponed till he has received the remuneration. Salary taxed in an earlier year on an accrual basis cannot be taxed a second time on a receipt basis when received in a later year. Further, where accrual basis has been adopted and the collection of tax has been postponed till the remuneration has actually been received, it would not be open to the Income-tax Authorities to change the basis afterwards and tax the salary on a receipt basis instead of on an accrual basis. Similarly, it cannot be taxed again when adjusted by the employer against salary earned in a later year.

If salary is 'due', then whether it is paid or not in the year in which it becomes due, it must be taxed as the income of that year. There is no question of taxing it as the income of the year when it is actually paid, if it is not drawn in the year in which it becomes due. Section 7 (old section) does not give any option either to the Income-tax Officer to assess the income in the year of accrual or in the year of receipt according to his choice or to the assessee to offer it when it becomes due or when it is received as he may choose. [I. T. R., Vol. 29 (1956), page 229] [Calcutta High Court decision]

§ 5. Admissible deductions (Section 16)—The following deductions are admissible with effect from the assessment year 1956-57 in computing the income under this head—(1) Expenses incurred by the assessee for purchasing books, magazines and other periodicals necessary for the performance of his duties, the maximum amount being Rs. 500. (2) Entertainment allowance at the rate of 20% of his remuneration (exclusive of any special allowance, benefit or other taxable perquisite) with a maximum of Rs. 5,000 for Government employees and Rs. 7,500 for others. If the assessee was not in receipt of this allowance prior to the 1st April, 1955, then no deduction is admissible. If the amount of the allowance is increased after the 1st April, 1955, then the deduction will be limited to the amount which the assessee was getting prior to the 1st April, 1955. (3) Expenses incurred by the assessee in maintaining any conveyance owned and used by him for the purpose of his employment. With effect from the assessment year 1968-69 a standard deduction for various categories of conventional conveyances used for the purpose of employment has been fixed in respect of each month or part thereof. The standard deduction for a motor car is Rs. 150 per month (increased to Rs. 200 per month from April, 1969, assessment year 1970-71) where the gross annual salary of the employee does not exceed Rs. 15,000, Rs. 200 per month where it is between Rs. 15,000 to Rs. 25,000 and Rs. 250 per month where it is more than Rs. 25,000. In respect of motor cycle, scooter or other moped the standard deduction is Rs. 50 per month and in respect of a bicycle Rs. 5 per month. With effect from April, 1970 (assessment year 1971-72) the standard deduction for a motor car (irrespective of the horsepower or the gross annual salary of the recipient) is Rs. 200 per month, for motor cycle, scooter or other moped Rs. 60 per month and in other cases (bicycle, tram, bus, train etc) Rs. 35 per month. The expenses will not, however, be allowed if any conveyance allowance is received by him. (4) Expenses actually incurred by the assessee wholly, necessarily and exclusively in the performance of his duties. This will cover travelling expenses of commercial travellers, trade representatives, etc. (5) Any amount paid in respect of taxes on profession, trade or employment.

Illustration, 11,

Sri Benoy Bhūsan Bagchi furnished you with the following particulars with a request to compute his total income for the year ended 31st March, 1970 on the basis of which he will submit his return of income to the Income-tax Authorities.

(1) Salary Rs. 2,000 per month. (2) Annual Profit Bonus @ 20% of salary. (3) He was provided with a rent-free unfurnished accommodation in Calcutta for which an annual rent of Rs. 3,000 was paid by his employer. (4) His Life Insurance Premium of Rs. 2,000 (Policy amount Rs. 30,000) was paid by his employer. (5) His wife was ill and medical expenses amounting to Rs. 1,800 was paid by his employer. (6) He was provided with a domestic servant whose salary of Rs. 75 per month was paid by his employer. (7) He purchased books and engineering journals valuing Rs. 1,500. (8) Rs. 3,000 was paid by his employer

to meet conveyance expenses wholly, necessarily and exclusively incurred in the performance of his duties. (9) Rs. 2,000 was paid by his employer towards education of his eldest son.

ANSWER

Computation of total income for the year ended 31st March, 1970.

1. Salary (at Rs. 2,000 per month)	Rs. 24,000
2. Annual Profit Bonus @ 20% of Salary	4,800
3. Value of rent-free accommodation	2,400
4. Life Insurance Premium paid by the employer	2,000
5. Free domestic servant	900
6. Education expense borne by the employer	2,000
	<hr/>
	Rs. 36,100
Less : Cost of Books purchased	500
	<hr/>
Gross Total Income	Rs. 35,600
Less : 60% of Life insurance Premium of Rs. 2,000	1,200
	<hr/>
Total income	Rs. 34,400

- Notes :** (1) Rent paid by the employer for the rent-free unfurnished accommodation is less than 30% of the Salary, as such the taxable benefit should be computed at 10% of the Salary. As the annual profit bonus has not been paid according to service conditions, it has been excluded for the purpose of calculation of the monetary value of the rent-free accommodation.
- (2) Reimbursement of medical expenses incurred by employees is not taxable under Departmental instructions.
- (3) Expenses for purchase of books are limited at Rs. 500.
- (4) Reimbursement of conveyance expenses incurred wholly, necessarily and exclusively for the performance of duties is not taxable.

§ 6. Deduction of tax at source (Section 192)—Any person responsible for paying “Salaries” shall, at the time of payment, deduct income-tax on the amount payable at the average rate applicable to the estimated total annual income of the assessee under this head. The employer, however, has got the power to increase or reduce the amount to be deducted in making adjustment of excess or deficiency arising out of any previous deduction or failure to deduct. Tax must be deducted even when the salary is payable outside India if it is earned in India. The value of such salary in rupees is to be calculated at the prescribed rate of exchange per rupee. Upto 5th June, 1966 the rate was 1sh—6d=Re. 1 and U. S. A. \$ 1=Rs. 4.762. From 6th June, 1966 to 18th November 1967 the rate was £1 sterling=Rs. 21 and U. S. A. \$ 1=Rs. 7.50. From 19th November, 1967 onwards the rate is £ 1 sterling=Rs. 18 and U. S. A. \$ 1=Rs. 7.50.

The person responsible for making the deduction shall pay the amount of tax deducted to the credit of the Central Government within one week from the date of such deduction. Within 30 days from the 31st March in each year, he shall submit to the Income-tax Officer, within whose jurisdiction the deduction is made, an annual return of the names and addresses of the employees, the amount of salary due for the year and the amount of tax deducted therefrom.

Though "Salary" is assessable on accrual basis, the liability to deduct tax at source arises only when the remuneration is actually paid. Moreover, when tax is deducted at source, the assessee cannot be called upon to pay tax unless he has received the salary without deduction. If a person fails to deduct or after deduction fails to pay the tax to the Government within a week from the date of such deduction, he shall be deemed to be an assessee in default in respect of the tax. But no penalty can be recovered from him unless such person has wilfully failed to deduct.

**The rates for the Accounting year 1.4.69 to 31.3.70
(Assessment year 1970-71) are as follows**

Rates of Income-tax.

(1) where the total income does not exceed Rs. 5,000.	5 per cent of the total income ;
(2) where the total income exceeds Rs. 5,000 but does not exceed Rs. 10,000.	Rs. 250 plus 10 per cent of the amount by which the total income exceeds Rs. 5,000 ;
(3) where the total income exceeds Rs. 10,000 but does not exceed Rs. 15,000.	Rs. 750 plus 17 per cent of the amount by which the total income exceeds Rs. 10,000 ;
(4) where the total income exceeds Rs. 15,000 but does not exceed Rs. 20,000.	Rs. 1,600 plus 23 per cent of the amount by which the total income exceeds Rs. 15,000 ;
(5) where the total income exceeds Rs. 20,000 but does not exceed Rs. 25,000	Rs. 2,750 plus 30 per cent of the amount by which the total income exceeds Rs. 20,000 ;
(6) where the total income exceeds Rs. 25,000 but does not exceed Rs. 30,000.	Rs. 4,250 plus 40 per cent of the amount by which the total income exceeds Rs. 25,000 ;
(7) where the total income exceeds Rs. 30,000 but does not exceed Rs. 50,000.	Rs. 6,250 plus 50 per cent of the amount by which the total income exceeds Rs. 30,000 ;
(8) where the total income exceeds Rs. 50,000 but does not exceed Rs. 70,000.	Rs. 16,250 plus 60 per cent of the amount by which the total income exceeds Rs. 50,000 ;
(9) where the total income exceeds Rs. 70,000 but does not exceed Rs. 1,00,000.	Rs. 28,250 plus 65 per cent of the amount by which the total income exceeds Rs. 70,000 ;
(10) where the total income exceeds Rs. 1,00,000 but does not exceed Rs. 2,50,000.	Rs. 47,750 plus 70 per cent of the amount by which the total income exceeds Rs. 1,00,000 ;
(11) where the total income exceeds Rs. 2,50,000.	Rs. 1,52,750 plus 75 per cent. of the amount by which the total income exceeds Rs. 2,50,000.

Provided that in the case of a person not being a non-resident individual (male or female) the amount of income-tax computed at the rates hereinbefore specified shall be reduced by—

- (a) Rs. 125 in the case of an unmarried individual (male or female)
- (b) Rs. 200 in the case of a married individual (male or female) who has no child.
- (c) Rs. 220 in the case of a married individual (male or female) who has one child mainly dependent on him or her.

- (d) Rs. 240 in the case of a married individual (male or female) who has more than one child mainly dependent on him or her.

In the case of a married individual (male or female) whose spouse has a total income exceeding Rs. 4,000, the amounts of Rs. 200, Rs. 220 and Rs. 240 should, however, be reduced to Rs. 125, Rs. 145 and Rs. 165 respectively.

No income-tax is deductible on a total income which is less than Rs. 4,000. To explain, if the total income for the year ending 31st March, 1970 (Assessment year 1970-71) is Rs. 3,900 income-tax deductible shall be NIL, although income-tax on Rs. 3,900 @ 5% is Rs. 195 less personal allowance of Rs. 125 will be Rs. 70 in the case of an unmarried individual (male or female).

In addition, income-tax deductible shall not exceed 40% of the amount by which the total income exceeds Rs. 4,000. To explain, if the total income of an unmarried individual assessee (male or female) is Rs. 4,050 the amount of income-tax deductible on Rs. 4,050 @ 5% i.e. Rs. 202.05 less personal allowance of Rs. 125 will be Rs. 77.05, but the amount shall be restricted to 40% of Rs. 50 i.e. Rs. 20.

In addition to spouse and children allowance dependent parents and grand-parents (having annual income of less than Rs. 1,000) allowance shall be allowed at the rate of Rs. 20 if the total income of the individual (male or female) is less than Rs. 10,000. To explain, if the total income of the individual (male or female) is less than Rs. 10,000 then in calculating the amount of income-tax the following amounts shall be deducted—

- (a) Rs. 125 plus Rs. 20 i. e. Rs. 145 for an unmarried individual (male or female) having dependent parents.
- (b) Rs. 200 plus Rs. 20 i. e. Rs. 220 for a married individual (male or female) having dependent parents.
- (c) Rs. 220 plus Rs. 20 i. e. Rs. 240 for a married individual (male or female) having one dependent child in addition to dependent parents.
- (d) Rs. 240 plus Rs. 20 i. e. Rs. 260 for a married individual (male or female) having more than one dependent child in addition to dependent parents.

In the case of a married individual (male or female) whose spouse has a total income exceeding Rs. 4,000, the amounts of Rs. 220, Rs. 240, and Rs. 260 should, however, be reduced to Rs. 145, Rs. 165 and Rs. 185 respectively.

Surcharge of Income-tax.

The amount of income-tax calculated after adjustment of personal allowance, spouse allowance, children allowance and parents allowance (where applicable) shall be increased by a surcharge at the rate of 10% of such income-tax. It has been explained fully in the illustrations.

The rates for the Accounting year 1470 to 31.3.71

(Assessment year 1971-72) are as follows

Rates of income-tax.

- | | |
|---|--|
| (1) where the total income does not exceed Rs. 5,000 | Nil |
| (2) where the total income exceeds Rs. 5,000 but does not exceed Rs. 10,000 | 10 per cent of the amount by which the total income exceeds Rs. 5,000 ; |
| (3) where the total income exceeds Rs. 10,000 but does not exceed Rs. 15,000 | Rs. 500 plus 17 per cent of the amount by which the total income exceeds Rs. 10,000 ; |
| (4) where the total income exceeds Rs. 15,000 but does not exceed Rs. 20,000 | Rs. 1,350 plus 23 per cent. of the amount by which the total income exceeds Rs. 15,000 ; |
| (5) where the total income exceeds Rs. 20,000 but does not exceed Rs. 25,000 | Rs. 2,500 plus 30 per cent. of the amount by which the total income exceeds Rs. 20,000 ; |
| (6) where the total income exceeds Rs. 25,000 but does not exceed Rs. 30,000 | Rs. 4,000 plus 40 per cent of the amount by which the total income exceeds Rs. 25,000 ; |
| (7) where the total income exceeds Rs. 30,000 but does not exceed Rs. 40,000 | Rs. 6,000 plus 50 per cent. of the amount by which the total income exceeds Rs. 30,000 , |
| (8) where the total income exceeds Rs. 40,000 but does not exceed Rs. 60,000 | Rs. 11,000 plus 60 per cent of the amount by which the total income exceeds Rs. 40,000 |
| (9) where the total income exceeds Rs. 60,000 but does not exceed Rs. 80,000 | Rs. 23,000 plus 70 per cent of the amount by which the total income exceeds Rs. 60,000 , |
| (10) where the total income exceeds Rs. 80,000 but does not exceed Rs. 1,00,000 | Rs. 37,000 plus 75 per cent of the amount by which the total income exceeds Rs. 80,000 , |
| (11) where the total income exceeds Rs. 1,00,000 but does not exceed Rs. 2,00,000 | Rs. 52,000 plus 80 per cent of the amount by which the total income exceeds Rs. 1,00,000 , |
| (12) where the total income exceeds Rs. 2,00,000 | Rs. 1,32,000 plus 85 per cent of the amount by which the total income exceeds Rs. 2,00,000 , |

Surcharge of Income-tax.

The amount of income-tax calculated as per rates mentioned above shall be increased by a surcharge at the rate of 10% of such income-tax. It has been explained fully in the illustrations.

Illustration 12.

Sri Chintaharan Chatterjee, married with two dependent children receives a monthly salary of Rs. 2,500. Calculate the amount of tax deductible therefrom during the years ending 31st March, 1970 and 1971.

ANSWER**Accounting year 1.4.69 to 31.3.70—Assessment year 1970-71**

Estimated total annual income under the head "Salary"	Rs. 30,000
Income-tax payable on Rs. 30,000	Rs. 6,250
Less : Wife and Children Allowance	240
	Rs. 6,010
Special Surcharge (@ 10% of Rs. 6,010)	601
Total amount deductible during the year ending 31st March, 1970.	Rs. 6,611

Accounting year 1.4.70 to 31.3.71—Assessment year 1971-72.

Estimated total annual income under the head "Salary"	Rs. 30,000
Income-tax payable on 30,000	Rs. 6,000
Special surcharge (@ 10% of Rs. 6,000)	600
Total amount deductible during the year ending 31st March, 1971.	Rs. 6,600

Occasionally employees get salary free of tax. The real pay in that case is not only the amount of salary but the amount of tax as well, as they are liable to pay tax on such amount. If that is again paid by the employer, the process goes on *ad infinitum*.

Illustration 13.

Sri Dwijottam Dass (unmarried) receives a monthly salary of Rs. 1,000 free of tax. Calculate his annual gross salary and the amount of tax payable by his employer during the years ending 31st March, 1969, 1970 and 1971.

ANSWER

Salary for the year ending 31st March, 1969 Rs. 12,000
Add : Tax to be borne by the employer.

Income-tax on Rs. 12,000.		
Rs. 10,000	Rs. 750	
2,000 @ 15%	300	
	Rs. 1,050	
Less : Personal allowance	125	
	Rs. 925	
Special surcharge (@ 10% of Rs. 925 (Rounded off))	93	Rs. 1,018
Income-tax on Rs. 1,018 @ 15%	Rs. 153	
Special surcharge (@ 10% of Rs. 153 (Rounded off))	15	168
Carried over	Rs. 1,186	Rs. 12,000

Brought Forward		Rs. 1,186	Rs. 12,000
Income-tax on Rs. 168 @ 15%	Rs. 25		
Special surcharge @ 10% of Rs. 25 (Rounded off)	3	28	
Income-tax on Rs. 28 @ 15%	Rs. 4		
Special surcharge @ 10% of Rs. 4 (Rounded off)	Nil	4	1,220
Gross Salary (Rounded off)			Rs. 13,220
Income-tax payable on Rs. 13,220.			
Rs. 10,000	Rs. 750		
3,220 @ 15%	483		
		Rs. 1,233	
Less : Personal allowance		125	Rs. 1,108
Special surcharge @ 10% of Rs. 1,108 (Rounded off)			112
			Rs. 1,220
Salary for the year ending 31st March, 1970			Rs. 12,000
Add : Tax to be borne by the employer			
Income-tax on Rs. 12,000.			
Rs. 10,000	Rs. 750		
2,000 @ 17%	340		
	Rs. 1,090		
Less : Personal Allowance			
	125		
	Rs. 965		
Special Surcharge @ 10% of Rs. 965 (Rounded off)	97	Rs. 1,062	
Income-tax on Rs. 1,062 @ 17%	Rs. 180		
Special Surcharge @ 10%	18	198	
Income-tax on Rs. 198 @ 17%	Rs. 34		
Special surcharge @ 10%	3	37	
Income-tax on Rs. 37 @ 17%	Rs. 6		
Special surcharge @ 10%	2	8	Rs. 1,310
Gross Salary (Rounded off)			Rs. 13,310
Income-tax payable on Rs. 13,310.			
Rs. 10,000	Rs. 750		
3,310 @ 17%	563		
		Rs. 1,313	
Less : Personal Allowance		125	Rs. 1,188
Special surcharge @ 10% of Rs. 1,188 (Rounded off)			122
			Rs. 1,310

Salary for the year ending 31st March, 1971

Rs. 12,000

Add : Tax to be borne by the employer

Income-tax on Rs. 12,000.

Rs. 10,000	Rs. 500	
2,000 @ 17%	340	
	<hr/>	
	Rs. 840	
Special Surcharge @ 10%	84	Rs. 924
	<hr/>	
Income-tax on Rs. 924 @ 17%	Rs. 157	
Special surcharge @ 10%	16	173
	<hr/>	
Income-tax on Rs. 173 @ 17%	Rs. 29	
Special surcharge @ 10%	3	32
	<hr/>	
Income-tax on Rs. 32 @ 17%	Rs. 6	
Special surcharge @ 10%	1	7
	<hr/>	<hr/>
Gross salary (Rounded off)		Rs. 1,136
		<hr/>
Income-tax payable on Rs. 13,140		
Rs. 10,000	Rs. 500	
3,140 @ 17%	533	
	<hr/>	
Special surcharge @ 10%		Rs. 1,033
		103
		<hr/>
		Rs. 1,136
		<hr/>

§ 7. **Provident Funds and Super-annuation Funds—Fourth Schedule to the Act**—Provident Funds are always favoured by the State as they encourage thrift. Persons contributing to such Funds are, therefore, entitled to certain tax concessions in respect of the same.

(a) **Provident Funds Act, 1925** deals with the Provident Funds maintained for the benefit of employees of Government, Railways, Local Authorities, Universities etc. Any contribution made by the employer with interest on accumulated balance is treated as "No Income" and as such excluded from the computation of total income. The employee's contribution will, however, be included, in the computation of total income. Relief in respect of income-tax will be allowed on the contribution up to one-fifth of salary or Rs. 8,000 whichever is less. Income derived from the investments of the Fund is treated as "No Income", and as such totally exempt from income-tax. When the accumulated balance is repaid to the employee at the time of his retirement, it is treated as "No Income" in his hand and is excluded from the computation of his total income for the relevant year.

(b) **Recognised Provident Funds**—Besides the Provident Funds to which the Provident Funds Act, 1925 applies Provident Funds maintained by private employers which conform to certain conditions, enjoy certain privileges in respect of income-tax. The main conditions, to which such Provident Fund must conform in order to secure these concessions are—

(i) That the funds shall be vested in two or more Trustees or in the Official Trustee under an irrevocable Trust;

(ii) That the employer shall not be entitled to recover any sum whatsoever from the fund except where the employee is dismissed for misconduct or voluntarily leaves employment without adequate reasons ;

(iii) That in any case such recoveries shall be limited to the contribution made by the employer himself, and to the interest in respect of such contributions or accumulations thereof;

(iv) That subscriptions of the employees and the contributions by the employer shall be regular and not casual;

(v) That the employer's contributions shall not exceed the employee's subscription as a rule; and

(vi) That the employees shall be employed in India or the principal place of business of the employer shall be in India.

The tax concessions are as follows--The employer's contribution up to 10% of the employee's salary (including dearness pay) shall not be included in the total income of the employee. The employee's contribution up to 1/5th of his salary (including dearness pay) or Rs. 8,000 whichever is lower shall be exempt from income-tax. In addition, the interest on the accumulated balance shall not be included in the total income of the employee provided the amount of the interest does not exceed 1/3rd of the employee's salary (including dearness pay) and that the interest is not calculated at a rate in excess of 6%. The employer's contribution in excess of 10% of the employee's salary (including dearness pay) as also the interest in excess of 6% shall, however, be liable to income-tax in full. The accumulated balance due to an employee which includes interest on contributions, is also exempt from income-tax and is not included in the computation of his total income of the year in which the amount becomes payable. The contributions made by an employer to the individual accounts of his employees are allowed as business expenditure, as the fund is an irrevocable trust. Income on the investment held by the fund is also exempt from income-tax.

When in any year an assessee has ceased to be an employee participating in a recognised Provident Fund and has been declared by the employer maintaining the Fund not to be eligible to receive the whole of the accumulated balance due to him, so much of his income as is assessable for that year shall be exempted from income-tax and shall be excluded from the computation of his total income for the purpose of the Act as is equivalent to so much of the accumulated balance due to him as he has not been paid or is not payable to him, and if such amount exceeds the amount of his income in that year, so much of his income in the following year or years as is equal to the amount of such excess shall be so exempted and excluded from the computation of total income in such year or years.

(c) Unrecognised Provident Funds--Contributions made by an employee to a Provident Fund not recognised by the Department are not exempt from income-tax. At the same time, the employee does not pay any tax on the employer's contribution and interest credited on the accumulated balance as these are not treated as income in his hands. As the fund is unrecognised, interest or other income arising out of investment thereof will be taxed in the hands of the fund itself as an 'association of persons'.

Contributions by an employer to a Private Provident Fund are allowed as a deduction if the fund is constituted as an irrevocable trust and if no part of the employer's contributions can be recovered by him, and further, the employer has made effective arrangements for deduction of tax at source from any repayments made from the Fund. If the Fund remains in the hands or under the control of the employer by merely setting aside the money in his books without creating an irrevocable trust, then no deduction can be allowed in the year in which the contributions are made. The total amount of perio-

dical contributions will be allowed as a deduction to the employer in the year in which the accumulated balance is repaid to the employee, even though it includes contributions of earlier years, the reason being that the expenditure is actually incurred at the time of repayment.

Repayment from unrecognised Provident Funds are liable to income-tax in the year of repayment in the hands of the recipient to the extent of the employer's contributions and interest thereon. Balance of the accumulated amount consisting of his own contributions and interest thereon is neither liable to any tax nor is included in the total income for rate purposes. The recipient is, however, entitled to get relief under Section 89 if the inclusion of the employer's contribution and interest thereon makes him liable to pay tax at a higher rate than that at which he would otherwise have been liable.

(d) Approved Super-annuation Fund—Super-annuation Funds are in the nature of Funds maintained by Insurance Companies. The employees contributing a certain amount from their salary which in fact represents premia for securing to them or to their dependents an annuity or pension at the time of their death or retirement and the employer making similar contributions to the fund. When a Super-annuation Fund is approved on the lines similar to those for the recognition of Provident Funds, the employee's contributions are exempted from payment of income-tax. The contributions are, however, included in the total income of the employee for rate purposes. Employer's contributions are not regarded as the income of the employee as the amount is not presently due to him and, as such, is not taxable in his hands. Income derived from the investments of the funds is treated as "No Income", and is not liable to any income-tax.

Contributions made by the employer will be treated as business expenditure in his hands. If the contribution is not an ordinary annual contribution it will be treated either as an expense incurred in the year in which the sum is paid or as an expense to be spread over a number of years as the Central Board of Direct Taxes may determine.

When the annuity or pension is paid to the employee it will be treated as income in his hands under the head "Salary." If, however, an amount is paid out of the Fund on the death of the employee or in lieu of or in commutation of an annuity or by way of refund of contributions on the death of the employee or on his leaving the employment, then no tax is payable thereon. On the other hand, if any contribution (including interest thereon) is repaid to an employee while in service, then income-tax shall be deducted by the Trustees of the Fund at the average rate of tax at which the employee was liable during the preceding three years.

(e) Unapproved Super-annuation Funds—Contributions made by an employee to a Super-annuation Fund not approved by the Department are not exempt from income-tax. The employee will not at the same time be called upon to pay any tax in respect of his employer's contributions. The Fund will not also get any tax exemption in respect of its income from investments.

Contributions to an unapproved Super-annuation Fund by an employer are treated as business expenditure if the Fund is constituted as an irrevocable Trust and if no part of the employer's contributions can be recovered by him. If, on the other hand, the Fund remains in the hands or under the control of the employer, then no deduction can be allowed in respect of the contributions made by him. Actual payments of pension to employees or to

their widows or children should be allowed as business expenditure if the pensionary payment is fixed and recurring one. Pension paid to persons who had at any time a share of interest in the business should, however, be disallowed.

When the employee gets the pension at the end of his service career, the same will be treated as income in his hands and taxed as "Salary." Lump sum repayment from an unapproved Super-annuation Fund in lieu of recurring pension are also liable to income-tax in the hands of the recipient in the year of repayment to the extent of the employer's contributions and interest thereon. He is, however, entitled to get relief under Section 89.

- (f) **Approved Gratuity Fund**—The main conditions for approval are :
- (i) That the Fund must be established under an irrevocable Trust.
 - (ii) That 90% of the employees shall be employed in India.
 - (iii) That the sole purpose of the fund shall be the provision of gratuity to the employees on their retirement or to the widows, children or dependents of such employees on their death.
 - (iv) That the benefits shall be payable in India.

Contributions made by the employer will be treated as business expenditure in his hands. When any gratuity is paid from the Fund, it will be treated as salary in the hands of the employee, but the amount will not be included in the total income to the extent of 15 months' average salary with a maximum of Rs. 24,000.

Under departmental instructions, "Salary" means the periodical payments made to the employee as remuneration for the services (i.e., basic salary). Any payments made to him by way of allowances or perquisites, or any payment in the nature of amenity, benefit or bonus should not, therefore, be taken into consideration as "Salary" for the purpose of calculating the amount of exemption. "Each year of completed service" means a period or periods of twelve months' service rendered by the employee reckoned from the date on which he commenced service with his employer. "Three years" means three "Calendar years" (commencing from 1st day of January and ending on the 31st day of December) immediately preceding the "Calendar year" in which the gratuity is paid to the employee.

§ 8. Deduction on account of Life Insurance Premia & Provident Fund contributions (Section 80C)—Income-tax is not chargeable in respect of sums which the assessee by condition of his employment is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties. The amount is treated as "No Income", as such is excluded from the computation of total income. The cost of travelling from a person's residence to his place of employment is not admissible nor are any expenses of a private character is allowable.

Income-tax is not payable in respect of (1) any sums deducted from salary payable to a Government employee, in accordance with the conditions of his service, for the purpose of securing to him a deferred annuity or of making provision for his wife or children : (2) any contributions to a Recognised Provident Fund by the employee up to 1/5th of the salary subject to a maximum of Rs. 8,000 : (3) any sums paid out of taxable income to effect an insurance on the life of the assessee or his wife or children.

Out of the premia paid in respect of the policy that covers the risk of

sickness and accidental injury and also the risk of death, only so much as is attributable to the risk of death is admissible as a deduction from the income liable to tax. Insurance premia payable in foreign currency should be converted at the rate of exchange in force on the days on which the premia are paid. No relief is admissible on premia paid out of income accruing or arising outside India unless such foreign income is chargeable to Indian income-tax.

The aggregate of any sums to be deducted shall not exceed 30% of the total income of the assessee subject to a maximum of Rs. 15,000. This allowance is further restricted to 10% of the capital sum assured excluding bonus, etc. i.e., if the policy is for Rs. 1,000, the maximum premium exempted should be Rs. 100 only. The deduction is restricted to 60% of the first Rs. 5,000 of the insurance premia, Provident Fund contribution etc., and 50% of the remaining amount eligible for deduction (**vide Chapter XV § 1**).

Illustration 14.

From the following particulars compute the total income of Sri Rama Ranjan Rakshit, Financial Adviser of Eastern Electrical Ltd., since 1-4-1960, for the financial year ended 31st March, 1970 on which Income-tax is payable.

(1) Basic Salary	Rs. 3,000 per month
(2) Dearness Allowance	600 „ „
(3) House Rent Allowance	375 „ „
(4) Entertainment Allowance	900 „ „
(5) Provident Fund contribution to Office Recognised Provident Fund to which the employer also contributes equal amount	375 „ „
(6) Life Insurance Premium deducted from salary under Salary Saving Scheme on a policy for Rs. 75,000	750 „ „
(7) Sri Rakshit pays rent on a residential accommodation hired by him in Central Calcutta at Rs. 750 per month. He occupied this accommodation for 8 months but received the allowance for the whole year.	
(8) Accumulated Balance in Prov. Fund on 1-4-69 was Rs. 60,000 at his credit on which interest @ 12% was credited for the year 1969-70.	

ANSWER

Computation of total income for the year ended 31st March 1970 (Assessment year 1970-71).

(1) Basic Salary	Rs. 36,000	
(2) Dearness Allowance	7,200	
(3) Employer's Contribution to the Provident Fund	Rs. 4,500	
Less 10% of Basic Salary	3,600	900
(4) Interest on accumulated Balance of Rs. 60,000 in Prov. Fund @ 12%	Rs. 7,200	
Less : Admissible deduction @ 6%	3,600	3,600
Carried over		Rs. 47,700

Brought Forward		Rs. 47,700
(5) Entertainment Allowance (The entire amount is includible as Sri Rakshit was not in receipt of this allowance before 1-4-55 in the present employment)		10,800
(6) House Rent Allowance		
(a) For the period no accommodation was hired—Rs. 375×4	Rs. 1,500	
(b) For the period accommodation was hired (8 months)		
(i) Allowance received Rs. 375×8	Rs. 3,000	
(ii) Rent paid less 10% of Basic salary (Rs. 6,000—2,400)	Rs. 3,600	
(iii) 20% of Basic Salary for 8 months	Rs. 4,800	
(iv) Maximum limit @ Rs. 300×8	Rs. 2,400	
Surplus amount to be included (Rs. 3,000 less Rs. 2,400)	Rs. 600	2,100
Gross Salary Income		Rs. 60,600
Deduction for: Provident Fund and Life Insurance Premium.		
Prov. Fund Contribution	Rs. 4,500	
Life Insurance Premium—Actual amount paid Rs. 9,000 but the amount qualified for deduction is limited to 10% of Policy amount	7,500	
	Rs. 12,000	
Deduction on 1st Rs. 5,000 @ 60%	Rs. 3,000	
,, ,, next 7,000 @ 50%	3,500	6,500
Income-tax payable on		Rs. 54,100

Illustration 15.

Sri Brijmohan Baysack is employed in Standard Stationers Ltd., since 1-4-50 at Calcutta. His salary is Rs. 3,000 per month and House Allowance at Rs. 450 per month with effect from 1-4-69. He was sanctioned an Entertainment Allowance at Rs. 250 per month with effect from the date of his joining the service subject to an increase of Rs. 25 on completion of 12 months service. From the following additional particulars compute his total income for the financial year 1969-70 on which income-tax is payable.

- (1) Contribution to the office recognised Provident Fund at Rs. 300 per month, the company also contributing the same amount.
- (2) Sri Baysack pays rent at Rs. 525 per month for occupying a house in Bidhan Sarani, Calcutta-6.
- (3) Sri Baysack paid the following Life Assurance Premia during the financial year 1969-70, out of his income.

(a) On his Own life	Rs. 3,500	Policy for Rs. 70,000
(b) On his Wife's life	4,200	" " 60,000
(c) On his Son's life	800	" " 20,000
- (4) Sri Baysack received an Annuity warrant for Rs. 900 during the financial year 1969-70 representing repayment and interest on the Annuity Deposit made by him in earlier years.

- (5) Sri Baysack has actually spent Rs. 8,000 during the financial year 1969-70 on the entertainment in connection with the business of the company.

ANSWER

**Computation of total income for the year ended
31st March 1970 (Assessment year 1970-71).**

1. Basic Salary			Rs. 36,000
2. Entertainment Allowance at Rs 725 per month			8,700
3. House Rent Allowance		Rs 5,400	
(i) Actual amount received		Rs 5,400	
(ii) Rent paid	Rs. 6,300		
Less : 10% of salary	3,600	Rs. 2,700	
(iii) 20% of Salary		Rs 7,200	
(iv) Maximum limit		Rs 3,600	
Surplus amount to be included			2,700
			Rs. 47,400
Less : Entertainment Allowance admissible			4,200
(i) Amount received during the year		Rs. 8,700	
(ii) Amount received during the year 1954-55 @ Rs 350 per month		Rs. 4,200	
(iii) 20% of Basic Salary		Rs 7,200	
(iv) Maximum limit		Rs 7,500	
Gross Salary Income			Rs. 43,200
Income from other sources : Refund Annuity with interest			900
Gross Total Income			Rs 44,100
Less : Deduction for Provident Fund and Life Assurance Premia—Prov. Fund		Rs. 3,600	
Life Assurance Premia on the policies of self, wife and son		8,500	
		Rs. 12,100	
Deduction on 1st	Rs. 5,000 @ 60%	Rs. 3,000	
„ „ next	7,100 @ 50%	3,550	6,550
Income-tax payable on			Rs. 37,550

Illustration 16.

Mr. Robinson Rebello is posted as General Manager in a shipping Company handling passenger and cargo traffic at Calcutta. From the following particulars compute his total income for the financial year 1969-70 on which income-tax is payable.

- (1) Basic Salary Rs. 2,500 per month.

- (2) Dearness Allowance Rs. 500 per month (included in salary for calculating super-annuation benefits).
- (3) Entertainment Allowance Rs. 750 per month. Mr. Rebello is in receipt of this allowance continuously from the same employer from 1950 but upto 31st March, 1960 he received at the rate of Rs. 500 per month thereafter it was increased to Rs. 750 per month.
- (4) Mr. Rebello contributed Rs. 250 per month to the office Recognised Provident Fund and his employer also contributed the same amount.
- (5) The company hired a flat at Alipore at Rs. 2,000 per month and provided the same to Mr. Rebello free of any rent.
- (6) The company also provided furniture which was hired at Rs. 700 per month. An air-conditioner and a refrigerator owned by the company (actual cost Rs. 6,000) was also provided to Mr. Rebello. The company incurred Rs. 500 during the financial year 1969-70 for repairs, etc.
- (7) The company provided a Mali to look after the garden and a Chowkidar for protecting the flat. Salary paid to Mali Rs. 100 per month and to the Chowkidar Rs. 150 per month.
- (8) The company provided a station wagon of 22 H. P. for exclusive and private use of Mr. Rebello and his family members. The running and maintenance expenses including normal wear and tear during the financial year 1969-70, amounted to Rs. 500 per month.
- (9) The company paid Rs. 5,000 in March, 1970 for the educational expense of Mr. Rebello's son studying outside India.
- (10) Mr. Rebello paid during the financial year 1969-70 Life Assurance Premium on his own life amounting to Rs. 10,000 (Assured sum being Rs. 80,000).
- (11) Electricity, Gas and Telephone bills amounting to Rs. 4,000 were paid by the company during the financial year 1969-70.
- (12) The company arranged a free pleasure trip to the coastal cities of India for Mr. Rebello and his family members in one of the steamers of the company.

ANSWER

**Computation of total income for the year ended
31st March 1970 (Assessment year 1970-71)**

(1) Basic Salary		Rs. 30,000
(2) Dearness Allowance (i.e. Dearness Pay)		6,000
(3) Entertainment Allowance	Rs. 9,000	
Less : Amount deductible [Note I]	6,000	3,000
<hr/>		
(4) Benefit in respect of Mali and Chowkidar provided by the company. (These are not exempted as the building is not owned by the employer)		3,000
(5) Benefit in respect of the station wagon provided by the company (Since the station wagon is exclusively used by the employee the entire cost (irrespective of its H. P. rating) of running and maintenance including normal wear and tear will be treated as a perquisite [Rule 3 (c)(iv)])		6,000
(6) Benefit in respect of Electricity, Gas and Telephone Bills paid by the company [Rule 3 (d)]		4,000
		<hr/>
Carried over		Rs. 52,000

	Brought Forward		Rs. 52,000
(7)	Rent-Free Furnished Quarter.		
	Actual Rent paid by the company		
	@ Rs. 2,000 per month	Rs. 24,000	
	Furniture hire @ Rs. 100 per month	1,200	
	10% of the cost of Air-conditioner and Refrigerator (The cost of repairs, etc. should be ignored)		
	10% of Rs. 6,000	600	
	Fair Rental value	Rs. 25,800	
	12.5% of Mr. Rebello's salary of Rs. 39,000 as per Note II below	Rs. 4,875	
	Add : Fair Rental Value in excess of 37.5% of Rs. 39,000 (Rs. 25,800 less Rs. 14,625)	11,175	16,050
(8)	Educational expense of son of Mr. Rebello borne by the company [Rule 3 (c)]		5,000
	Gross Salary Income		Rs. 73,050
	Less : Deduction for Provident Fund and Life Assurance Premia :		
	Provident Fund	Rs. 3,000	
	Life Assurance Premia paid Rs. 10,000 but limited to 10% of Assured sum of Rs. 80,000	8,000	
		Rs. 11,000	
	Deduction on 1st Rs. 5,000 @ 60% Rs.	3,000	
	„ „ next 6,000 @ 50%	3,000	6,000
	Income-tax payable on		Rs. 67,050
Notes :			
I.	Entertainment Allowance Admissible		
	(i) Amount received during the year	Rs. 9,000	
	(ii) Amount Received in 1954-55	Rs. 6,000	
	(iii) 20% of salary (exclusive of any allowance and benefits)	Rs. 6,000	
	(iv) Maximum limit	Rs. 7,500	
	Amount admissible being the lowest	Rs. 6,000	
II.	Perquisite in respect of Rent-Free Furnished Quarter		
	(1) Basic Salary	Rs. 30,000	
	(2) Dearness pay	6,000	
	(3) Inadmissible Entertainment Allowance (Rs. 9,000 less Rs. 6,000)	3,000	
	Salary for the purpose of calculating perquisite	Rs. 39,000	

- III.** Benefit arising out of free pleasure trip to the coastal cities of India should not be treated as taxable perquisite as the company is dealing in the carriage of cargo and passengers and the journey was performed in one of the company's steamers. [Rule 3 (f)]

Illustration 17.

Fanindra Nath Sarkar, married with more than one dependent child received during the year ended 31st March, 1969 Rs. 16,000 as basic salary and Rs. 2,000 as annual bonus. He contributed Rs. 2,000 towards his provident fund; a similar amount was contributed by his employer. Interest @ 7% amounting to Rs. 700 was credited to his Provident Fund Account. He paid Rs. 2,000 as Life Insurance premium (Capital sum assured being Rs. 25,000). Calculate the amount of income-tax payable by him if the Provident Fund is registered (1) under the Provident Fund Act, 1925, (2) recognised under the Income-tax Act, 1961, or (3) unrecognised private Fund.

ANSWER

(1) If the Provident Fund is registered under the Provident Funds Act, 1925.

Basic Salary for the year ended 31st March, 1969	Rs.	16,000
Annual Bonus		2,000
		<hr/>
Gross Salary Income	Rs.	18,000
Less : 60% of Employees' contribution to Provident Fund and		
Life Insurance Premium (60% of Rs. 2,000--2,000)		2,400
		<hr/>
Total Income	Rs.	15,600

Income-tax payable on Rs. 15,600 at the rates ruling in the Assessment year 1969-70.

Rs. 15,000	Rs. 1,500	
600 @ 20%	120	
	<hr/>	
	Rs. 1,620	
Less : Wife and children allowance	240	Rs. 1,380
	<hr/>	
Special Surcharge payable @ 10%		138
		<hr/>
Total amount payable		Rs. 1,518

(2) If the Provident Fund is recognised under the Income-tax Act, 1961.

Basic Salary for the year ended 31st March, 1969	Rs.	16,000
Annual Bonus		2,000
Employer's contribution to Prov. Fund	Rs. 2,000	
Less : 10% of Basic Salary	1,600	400
	<hr/>	
Interest on Prov. Fund @ 7%	700	
Less : Proportionate amount @ 6%	600	100
	<hr/>	
Gross Salary Income	Rs.	18,500
Less : 60% of employee's contribution to Provident Fund and		
Life Insurance premium (60% of Rs. 2,000+2,000)		2,400
		<hr/>
Total Income	Rs.	16,100

Income-tax payable on Rs. 16,100 at the rates ruling in the Assessment year 1969-70.

Rs. 15,000	Rs. 1,500	
1,100 @ 20%	220	
	Rs. 1,720	
Less : Wife and children allowance	240	Rs. 1,480

Special Surcharge payable @ 10%		148
		Rs. 1,628
Total amount payable		-----

(3) If the Provident Fund is unrecognised private Fund.

Basic Salary for the year ended 31st March 1969	Rs. 16,000
Annual Bonus	2,000

Gross Salary Income	Rs. 18,000
Less : 60% of Life Insurance premium of Rs. 2,000	1,200

Total Income	Rs. 16,800

Income-tax payable on Rs. 16,800 at the rates ruling in the Assessment year 1969-70.

Rs. 15,000	Rs. 1,500	
1,800 @ 20%	360	
	Rs. 1,860	
Less : Wife and children allowance	240	Rs. 1,620

Special Surcharge payable @ 10%		162
		Rs. 1,782
Total amount payable		-----

Illustration 18.

From the following particulars calculate the amount of tax payable by Mr. Emerson (married having more than one dependent child) for the assessment year 1969-70. (1) Basic Salary Rs. 21,000, (2) Family allowance Rs. 3,600, (3) Servant's allowance Rs. 3,000, (4) Transport allowance Rs. 4,000, (5) Entertainment allowance Rs. 4,800, (6) High cost of living allowance @ 20% of Basic Salary. (7) Annual Bonus @ 20% of Basic salary. (8) Rent-free furnished quarter, (at Asansol) fair rent of which is Rs. 600 per month including furniture hire charges. Mr. Emerson contributed Rs. 2,100 towards Provident Fund (Recognised), a similar amount being contributed by his employer. Interest on Provident Fund @ 6% basis was Rs. 1,000. He also paid Life Insurance premium amounting to Rs. 4,000. (Capital value being Rs. 1,00,000) and salary to a sweeper and night watchman amounting to Rs. 100 per month for proper upkeep of the quarter, 50% of the transport allowance was spent for the performance of his official duties. Mr. Emerson used to get Rs. 100 per month as entertainment allowance prior to 1st April, 1955.

ANSWER

**Computation of total income for the year ended 31st March, 1969.
Assessment year 1969-70**

Basic Salary		Rs.	21,000
Family allowance			3,600
Servant's allowance	Rs.	3,000	
Less : Admissible deduction		1,200	1,800

Transport allowance	Rs.	4,000	
Less : Admissible deduction		2,000	2,000

Entertainment allowance	Rs.	4,800	
Less : Admissible deduction		1,200	3,600

Value of Rent-free quarter @ 12.5% of	Rs.	32,000	4,000
High cost of living allowance			4,200
Annual Bonus @ 20% of Rs. 21,000			4,200

Gross Total income under the head "Salary"		Rs.	44,400
Less : Life Insurance premium and Provident Fund contribution			
60% of Rs. 5,000	Rs.	3,000	
50% of Rs. 1,100		550	3,550
		-----	-----
Total Income		Rs.	40,850

**Income-tax payable on Rs. 40,850 at the rates
ruling in the Assessment year 1969-70.**

Rs. 30,000	Rs.	6,000	
10,850 @ 50%		5,425	

	Rs.	11,425	
Less : Wife & Children allowance		240	Rs. 11,185 00

Special Surcharge @ 10%			1,118 50

			Rs. 12,303 50

Total Amount payable (Rounded off)		Rs.	12,304

Note : As the amount of fair rent including furniture hire charge i.e., Rs. 7,200 is less than 25% of (Basic salary of Rs. 21,000 Family allowance of Rs. 3,600, Servants allowance of Rs. 1,800, Transport allowance Rs. 2,000 and Entertainment allowance of Rs. 3,600), the monetary equivalent of the furnished quarter has been computed @ 12.5% basis. As the amount of bonus has not been paid according to service conditions, it has been excluded for the purpose of calculation of the monetary value of the rent-free Quarter.

“Salary” has different meaning for different purposes—

(1) For calculating tax-free gratuity—[Section 10(10)]—salary means “Basic Pay”. (Before deduction of Income-tax, Prov. Fund Contribution, loans etc.).

(2) For calculating tax-free “entertainment allowance”—[Section 16 (iii)]—salary means “Basic Pay”.

(3) For calculating tax-free ‘House Rent Allowance’—[Section 10 (13A)]— salary means “Basic Pay” and “Dearness Pay” (i.e. “Dearness Allowance” taken into consideration for the purpose of retirement benefits according to the service rules).

(4) For calculating tax-free ‘employers’ contribution to Prov. Fund’ [Rule 6 of Part A of the Fourth Schedule] and ‘employees’ Contribution to Prov. Fund’—[Section 80C(2) (d)]—salary means “Basic Pay” and “Dearness Pay”

(5) For calculating taxable benefit in respect of Rent-free furnished or unfurnished accommodation provided to an employee. [Rule 3, Income-tax Rules, 1962]—salary means “Basic Pay”, “Dearness Pay”, “all taxable allowances”, “Bonus” and “Commission” payable monthly or otherwise.

(6) For the purpose of calculating the taxable benefit or amenity granted or provided to an employee—[Section 17(2) (iii) (c)]—salary means “annual cash emoluments” (i.e. exclusive of all non-monetary benefits, amenities etc.) exceeding Rs. 18,000—

Revisional Problems

Question Nos. 15, 16, 17, 18, 19, 20, 26, 30, 31, 36, 40, 44 and 57.

CHAPTER VIII

HEADS OF INCOME (Continued)

INTEREST ON SECURITIES (Sections 18 to 21)

§ 1. Income assessable under this head—Interest on the securities of the Central Government and State Governments and on the debentures or other securities of money issued by or on behalf of a Local Authority or a Company is assessable as "Interest on Securities". But interest payable on debentures issued by associations, clubs or individuals is not assessable under this head, it being chargeable under Section 28 or 56. Interest on securities of the Government of India issued, contracted and repayable in India, accrues and arises in India even when it is actually paid outside India.

§ 2. Tax-free Securities (Section 86)—Interest on the securities of the Central Government which are issued or declared to be income-tax-free are exempt from income-tax. When a State Government issues a security as income-tax-free, the income-tax on interest thereon shall be payable by that State Government. So far as investors are concerned, therefore, securities issued income-tax-free, whether by the Central or the State Governments, stand exactly on the same footing i. e., income-tax is not payable on the interest received therefrom by the assessee, the interest should of course be included in the computation of his total income for the relative year for the purpose of deciding whether he is liable to income-tax as also for determining the rate at which his other income should be taxed. Tax-free securities, unlike tax-free salaries, are not tax-added securities in the sense that the receiver of the interest is credited with a notional payment of income-tax. The owner therefore, is not entitled to get credit in respect of such tax constructively paid by him; not even in respect of tax-free securities issued by a State Government though the tax in such case is paid to the Central Government by the State Government.

Interest on Bonds issued by the Central Government under loan agreement with the International Bank for Reconstruction and Development has been excluded from the computation of total income in the hands of a non-resident (residents being liable to tax in full). Similarly, interest on 3½% Ten-year Treasury Savings Deposit Certificates has been excluded from the computation of total income in the hands of all categories of assessee. Interest on securities held by the Issue Department of the Central Bank of Ceylon has also been excluded from the computation of the total income.

§ 3. Admissible expenses (Sections 19 and 20)—In computing the income of an assessee under this head, allowance should be made in respect of any sum deducted from such interest as commission by a Banker for collecting such interest on his behalf. Interest payable on money borrowed by the assessee for the purpose of investment in such securities is also an allowable expense subject to the condition that where the interest is payable outside India, the expense will not be allowed unless tax in respect thereof has been

paid or deducted at source or is recoverable from an agent of the recipient in India.

In addition to these expenses, Banking Companies are allowed to claim proportionate amount of expenses incurred in respect of rent, repair, insurance premia, land revenue, local rates and taxes, commission paid to employees, etc. Total expenses incurred under the above heads will be allocated in proportion of the interest on securities (before deduction of tax) to the gross receipts from all sources. The proportionate amount of the expenses admissible against interest on securities will, however, be disallowed in computing the income under "business". Interest payable on borrowed capital should also be similarly allocated as follows—

$$\left. \begin{array}{l} \text{Total interest payable} \\ \text{on borrowed capital} \end{array} \right\} \wedge \frac{\text{Interest on Securities (Gross)}}{\text{Gross receipts from all sources}}$$

Occasionally the Government issues loans on tap i. e., the purchase price of the loan payable by a subscriber is increased by certain per cent weekly from the last date of payment of interest to the date of purchase, weekly increase being the net interest accruing on a *de die in diem* basis. At the end of the half-year however, full interest is paid to the holder. Where such interest is paid to the Reserve Bank of India, the Revenue Authorities should assess only the different between the full interest and the increase in price over the nominal value representing the interest paid in respect of the broken period. This concession, however, does not apply to ordinary commercial transactions involving the purchase and sale of securities in the open market where the price including the net interest for the broken period, is settled between the vendor and the vendee. (See § 6)

It will be evident from the above that there is nothing to prevent the net income under this head from being negative as a result of the amount of interest paid exceeding the amount of interest received.

§ 4. Deduction of tax at source (Section 193)—The person responsible for paying any income chargeable under this head shall deduct income-tax [Vide Chapter XXI § 1]. The person deducting income-tax shall furnish a certificate to the effect that income-tax has been deducted specifying the amount and the rate at which the deduction has been made. Any sum deducted shall be deemed to be income received by the assessee and shall be treated as payment of income-tax on his behalf the necessary credit being given to him in the assessment.

It frequently happens that security-holders hand over their Securities and Bonds to their Bankers for collection of interest. In that event, the certificate would be given to the Bank for the whole block of Securities. In such a case, the Income-tax Officer shall accept a certificate from the Bank and act upon it as if it were a certificate received direct from the person deducting income-tax at source.

It is desirable that refunds should be avoided as far as possible. There are, for example, certain institutions, authorities and funds the income of which

is exempt from tax. Similarly, there are persons whose assessable income is less than Rs. 4,000 and as such are not liable to tax. There are other cases where the Income-tax Officer may be satisfied that income of a holder of a security while liable to tax is not likely to fluctuate so widely as to alter the rate appropriate to the total income. The Income-tax Officer shall, in all proper cases, on the application made by the assessee, issue a certificate authorising the person paying the interest on securities to make no deduction of tax or to deduct tax at a specified lower rate.

When the owner of a security to whom a certificate is granted has endorsed the security to his Bank for collection of interest, the officer responsible for paying the interest regards the Bank as the real holder of the security and takes no cognisance of any arrangement that may have been entered into between the security-holder and the Bank with the result that the certificates standing in the name of the real owner of the security granted by the Income-tax Officer becomes inoperative. Again, sometimes the collecting Bank purchases securities on behalf of its constituents and holds them in its own name and does not endorse them in favour of the constituents who are the actual owners. In such cases, the owners obtain exemption certificates from the Income-tax Authorities on production of the Bank's safe-custody receipts issued in their favour. To avoid the possibility of paying officer refusing to act on these exemption certificates, Treasury Officers have been instructed to act on such certificates when presented along with a declaration by the Bank to the effect that the security continues to be the property of the person named as the owner in the exemption certificate.

§ 5. Appreciation and Depreciation of Securities—When shares and securities are held by a company, firm or individual as part of its or his capital any appreciation or depreciation in their market value is outside the scope of the Income-tax Act, and similarly, when the value of the shares and securities so held is realised, the transaction is a capital transaction and no account should be taken for income-tax purposes of any profit or loss resulting from the sale. On the other hand, where a company, firm or an individual habitually uses part of its or his resources in the purchase of shares and securities with a view to obtaining profit on their sale and the subsequent reinvestment of the proceeds, the company, firm or individual is in altering its or his investments carrying on a trade for the sake of obtaining profit therefrom and the profits thus secured or losses incurred are trading profits or losses which must be taken into account in determining the assessment to income-tax. In such cases, appreciation or depreciation in the values of the shares and securities would automatically be allowed in as much as the shares and securities would be treated as stock-in-trade and valued at cost price, or market price, whichever is lower. It will therefore, always be a question of fact to be decided on the merits of each case whether the changes in investment are of sufficiently systematic a character as to constitute the exercise of a trade, but if they are, the profits therefrom are liable to tax and an allowance must be made for any losses in calculating the amount of tax payable.

§ 6. Sale of Securities "cum" interest—Interest on securities does not arise from day to day but on certain fixed days and where securities are purchased at a price expressed as a capital sum plus interest computed from the last due date to the date of sale, interest thus paid to the vendor is not deductible from the interest actually received by the purchaser on the next due date, in assessing the purchaser under the head "Interest on Securities". Where a security is sold "cum" interest after the due date for payment of interest, the purchaser drawing interest, and not the vendor, the vendor cannot claim for

the purpose of assessment that the interest should be treated as his income and that he should be given credit for the amount of tax deducted therefrom ; on the other hand, if he is a dealer in securities, the profits from the purchase and sale of securities will be taxable in his hands. The mere quotation in the bargain of the estimated accrued interest does not establish a separate contract in respect of interest, and if it were considered to be a separate contract, it would remain part and parcel of the whole purchase consideration.

§ 7. *Treasury Bills*—The difference between the price paid for a Treasury Bill and the sum realised by the purchaser by holding the bill until maturity or converting it before maturity, represents a profit chargeable to income-tax as income from "Other Sources" and the profit is not an accretion of capital. The profit thus made, constitutes income of the year in which it is received. Income-tax is not deducted at source in respect of this income.

§ 8. *Sterling Securities*—Interest on Sterling securities and debentures which is payable outside India, should ordinarily be treated as foreign income since the right to receive the interest can be enforced only outside India. If however, the interest is received in India, it will be taxable in full. In the Finance Act, 1954, a provision was made by which interest on Sterling securities and debentures issued for public subscription before the 1st April, 1938 was excluded from the computation of "Indian income" in the hands of non-residents.

Illustration 19.

From the following statement of account, compute the total income of Shri Gangadhar Ghosh.

Date	Particulars	Deposits Rs. P.	Withdrawals Rs. P.	Balance Rs. P.
1969				
5th April	Six month's int. in 3% Cal. Municipal Debs. 1966-67 for Rs. 30,000 less Income-tax Rs. 90 00 Surcharge Rs. 9 00 Commission 75 P.	350 25		Dr. 5,491 62
30th „	Salary for April	150 00		
2nd May	Self cheque No. 43207 Six month's int. on 3% Cal. Port Trust Debs. 1967 for Rs. 40,000 less Income-tax Rs. 120 00 Surcharge Rs. 12 00 Commission Re. 1	467 00	400 00	
31st „	Salary for May	150 00		
28th June	Int. on overdraft resulting from purchase of 3% Cal. Municipal Debentures Salary for June	150 00	126 25	Dr. 4,750 62

Date 1969	Particulars	Deposits		Withdrawals		Balance	
		Rs.	P.	Rs.	P.	Rs.	P.
29th July	Salary for July	160	00				
22nd Aug.	Six month's int. on 3½% New Howrah Bridge Loan 1966-67 for Rs. 20,000 less in- come-tax Rs. 65·00 Surcharge Rs. 6·50 Commission 75 P.	252	75				
31st „	Salary for August	160	00				
2nd Sept.	Self cheque No. 43208			600	00		
16th „	Six months' int. on 4% Loan 1960-70 for Rs. 10,000 less income-tax Rs. 40·00 Surcharge Rs. 4·00 Commission 50 P.	155	50				
30th „	Salary for September	160	00				
8th Oct.	Six months' int. on 3% Cal. Municipal Debs. 1966-67 for Rs. 30,000 less In- come-tax Rs. 90·00 Surcharge Rs. 9·00 Commission 75 P.	350	25				
29th „	Salary for October Self cheque No. 43209	160	00	450	00		
2nd Nov.	Six months' int. on 3% Cal. Port Trust Debs. 1967 for Rs. 40,000 less in- come-tax Rs. 120·00 Surcharge Rs. 12·00 Commission Re. 1	467	00				
29th „	Salary for November	160	00				
30th Dec.	Int. on overdraft resulting from pur- chase of 3% Munici- pal Debentures.			103	75		
	Salary for December	160	00			Dr. 3,718	87

Date 1970	Particulars	Deposits Rs. P.	Withdrawals Rs. P.	Balance Rs. P.
31st Jan.	Salary for January	160·00		
21st Feb.	Six months' int. on 3½% New Howrah Bridge Loan 1966-67 for Rs. 20,000 less Income-tax Rs. 65·00 Surcharge Rs. 6·50 Commission 75 P.	252·75		
28th ..	Salary for February	160·00		
3rd Mar.	Self cheque No. 43210		600·00	
15th ..	Six months' int. on 4% Loan 1960-70 for Rs. 10,000 less Income-tax Rs. 40·00 Surcharge Rs. 4·00 Commission 50 P.	155·50		
29th ..	Salary for March	160·00		Dr. 3,430·62

ANSWER

Statement of Interest on Securities

	Date of Credit	Gross Rs. P.	I/Tax Rs. P.	I/Tax Sur- charge Rs. P.	Com. Rs. P.	Net Rs. P.	†
3% Cal. Muni- cipal Debs. 1966- 67 for Rs. 30,000	5-4-69	450·00	90·00	19·00	0·75	350·25	
	8-10-69	450·00	90·00	9·00	0·75	350·25	
3½% Cal. Port Trust Debs. 1967 for Rs. 40,000	2-5-69	600·00	120·00	12·00	1·00	467·00	
	2-11-69	600·00	120·00	12·00	1·00	467·00	
3 % New Howrah Bridge Loan 1966- 67 for Rs. 20,000	22-8-69	325·00	65·00	6·50	0·75	252·75	
	21-2-70	325·00	65·00	6·50	0·75	252·75	
4% Loan 1960-70 for Rs. 10,000	16-9-69	200·00	40·00	4·00	0·50	155·50	
	15-3-70	200·00	40·00	8·00	0·50	155·50	
		<u>3,150·00</u>	<u>630·00</u>	<u>63·00</u>	<u>6·00</u>	<u>2,451·00</u>	

Statement of Total Income for the year ended 31st March, 1970

Assessment year 1970-71

Salaries Rs.	150 × 3	Rs.	450		
	160 × 9		1,440	Rs.	1,890
Interest on Securities		Rs.	3,150		
Less : Bank commission and interest on overdraft			236		2,914
Total Income (Rounded off)				Rs.	<u>4,800</u>

CHAPTER IX

HEADS OF INCOME (Continued)

INCOME FROM HOUSE PROPERTY (Sections 22 to 27)

§ 1. **Scope of the Sections**—The tax shall be payable by an assessee under this head in respect of properties consisting of building or lands appurtenant to a building by the owner of such property. Lands not attached to a building are not chargeable under this head. The income derived from lands let out in urban areas for the purpose of storing material etc., is chargeable to tax under Section 56—“Income from other sources”. Though the word ‘building’ on ordinary sense means a block of brick or stonework covered by a roof, for income-tax purposes it includes docks, warehouses, bridges, and the like.

Every person who owns a house or building is liable to pay income-tax on the annual letting value of it whether he occupies it himself or lets it out to a tenant or lets it remain unoccupied. His liability to pay income-tax arises from the mere fact of his owning the property having an annual letting value and not from his actually deriving any income from it. Even if he does not derive any income from it, as, for example, when he occupies it himself or lets it remain vacant, he is liable to pay tax. Even when he derives income, as, for example, when he lets it out on rent, he is liable to pay tax not on the actual amount of the rent but on the annual letting value. The annual letting value of the house may in many cases be the same as the actual rent realised from it but it can also be different. [I. T. R., Vol. 49 (1963), page 55] [Allahabad High Court decision]

It is to be noted, therefore, that it is only the owner who is liable to pay tax under this head. The question of ownership should be determined with reference to the accounting year, as such it is immaterial even when the assessee has ceased to be the owner in the assessment year. Where a person derives an income from house property which he holds on lease, such income is chargeable under Section 56. Buildings or lands occupied by the owner thereof for the purposes of his own business, profession or vocation, the profits of which are chargeable to tax, are not liable to pay tax under this head. The full profits of the business, profession or vocation without any deduction for such buildings or lands are chargeable under Section 28. But where a man who has invested his capital in house property and who keeps an office and a staff of rent collectors, clerks etc., is not carrying on a business. He is merely taking the ordinary steps necessary for enjoying the income from his property and the fact that the owner is a limited company having a place of business does not make any difference. Income derived from property belonging to a company which has been incorporated for the purpose of owning and letting out such property is not assessable as income derived from business, but should be assessed under Section 22 of the Income-tax Act.

The respondent (National Storage Private Ltd.) purchased a plot of land at an approved place and constructed thereon godowns for the storage of films. There were 13 units. Each unit was divided into 4 vaults having a ground floor for rewinding of films and an upper floor for storage of films. The walls and the ceilings were of a particular width and automatic fireproof door was installed in one wall which would close immediately on the outbreak of fire. These units were constructed in conformity with the requirements and specifications laid down in the Cinematograph Film Rules, 1948. The Vaults were

licensed to film distributors. Under the licence the vault could not be used for any purpose other than storing cinema films and the ground floor could be used only for the purpose of examination, cleaning, waxing and rewinding of films. The licensee could not transfer or sublet. A key to each vault was retained by the vault-holder but the key to the entrance which permitted access to the vaults was in the exclusive possession of the respondent. The respondent installed a fire alarm and paid an annual amount to the municipality towards fire services. It maintained a regular staff and also paid for the entire staff of the Indian Motion Picture Distributors Association for services rendered to licensees. It opened in the premises a railway booking office free of charge for despatch and receipt of film parcels. A canteen was also run in the premises for the benefit of the vault-holders and a telephone had been provided for them. The licensees paid monthly charges for the use of the vaults

It was held by the Hon'ble Supreme Court that the respondent was carrying on an adventure or concern in the nature of trade and the subject which was hired out was a complex one. The respondent was in occupation of all the premises for the purpose of its own concern, the concern being the hiring out of specially built vaults and providing special services to the licensees. The return received by the respondent was not income derived from the exercise of property rights only, but was income received from carrying on an adventure or concern in the nature of trade. The income arising from licensing the vault to vault-holders had, therefore, to be computed under Section 10 (old section) of the Indian Income-tax Act, 1922, and not under Section 9 (old section) [I. T. R. Vol. 66 (1967), page 596]

Where building is owned jointly by two or more persons and their respective shares are ascertainable, the co-owners should not be assessed as an association of persons, but each of them should be assessed individually in respect of his share of the income. In the case of impartible estates, the estate holder is regarded as the individual owner for the purpose of this section and instead of the Hindu undivided family being assessed, the holder should be assessed in his individual capacity on the income from the properties.

N, a Hindu governed by the Dayabhaga school of Hindu law, received certain immovable properties by way of gift from his mother out of assets bequeathed to her by his father. N died intestate in 1940 leaving him surviving his widow and his only son, the petitioner. For many years they were separately assessed in regard to the income from the immovable properties. In December, 1959, the Income-tax Officer sent a letter to the petitioner stating that he was of opinion that the income should have been assessed in the hands of the Hindu undivided family and gave an opportunity to the petitioner to produce evidence in support of the petitioner's contention. The petitioner thereupon applied to the High Court for the issue of a writ objecting to the proposal of the Income-tax Officer : It was held by the Hon'ble Calcutta High Court that as the widow and the son, being governed by the Dayabhaga school of Hindu law, had defined shares in the properties, they could not be assessed in the status either of an association of persons or of a Hindu undivided family. The tax had to be assessed separately on the individuals on the basis of their respective share of the income from the properties. [I. T. R., Vol. 47 (1963), page 927]

Where the son and the widow of R, a Hindu governed by the Dayabhaga system of Hindu law, inherited R's properties and under the Dayabhaga system of law, read with Section 3(1) of the Hindu Women's Rights to Property Act, 1937, and Section 14 of the Hindu Succession Act, 1956, each of them became

entitled to a definite half share in the properties inherited. It was held by the Hon'ble Calcutta High Court that the share of each of them in the income from the house properties inherited should be included in his or her individual total income, for the purpose of assessment to income-tax under Section 9(1) (old section) read with Section 9(3) (old section) of the Indian Income-tax Act, 1922, though they may be members of an undivided family. [I. T. R., Vol. 59 (1966), page 216]

In the case of *S. N. Syed Mohammed Saheb & Bros vs. Commissioner of Income-tax Kerala*, the Hon'ble Kerala High Court observes as follows :

In our opinion, Section 22 deals with a case where the assessee is the owner of the house property, whereas Section 26 applies to a case where the assessee is an association of persons and the members or the persons constituting such association own the house property in definite and ascertainable shares, in other words, as co-owners. To put it differently, Section 26 applies to a case where the controversy is whether the income from the house property should be included in the total income of an association of persons or whether the income should be assessed in the hands of the persons who constitute such association. Putting the idea again differently, in a case where the controversy is whether the income of the house property should be included in the total income of a firm, a company or a joint Hindu family, or should be assessed in the hands of the members of the firm, company or joint Hindu family, Section 26 does not come into operation : in all these cases, Section 22 alone applies. [I T. R. Vol. 68 (1968), page 792]

Members of Tenants' Ownership Co-operative Housing Societies or Tenants' Co-partnership Co-operative Housing Societies to whom a building built by the societies has been allotted or leased should be treated as owners of the said building and assessed individually in respect of its income. The societies should not be charged to tax in respect of the income from the said building.

§ 2. Annual value of a building let out to tenants—Tax under the head "income from house property" is chargeable in respect not of any actual rental or cash received but of the "annual value". The annual value of a building is the full annual rent at which the building could be let from year to year if the owner bears all owner's burdens including municipal rates and taxes chargeable on the owner and if the tenant bears all tenant's burdens including municipal rates and taxes chargeable on the tenant. It differs from the actual annual rent payable on a long-term lease or the actual rent payable on daily basis.

With effect from the assessment year 1969-70, the entire amount of municipal tax paid by the owner shall be deducted in determining the annual value irrespective of the year in which the building is constructed. Any portion of the municipal tax paid by the occupier should be ignored for adjustment of the annual value.

In addition, the rent payable by a tenant may include charges for amenities provided by the owner such as maintenance of lift, garden, lights in the staircase etc. for common use of the occupants. In such cases, the annual value should be determined after deducting such charges for amenities included in the annual rent.

In the case of houses, the erections of which were started and completed after the 1st April, 1961, the annual value will be reduced by the amount of such annual value with a maximum of Rs. 600. This concession is admissible for

3 years from the date of completion. If the resultant amount is a negative figure, the annual value should be taken at NIL.

§ 3. Annual value of a building occupied by the owner for residential purposes should be computed on the same basis of annual value discussed earlier. Thereafter, the amount should be reduced by 50% or Rs. 1,800 whichever is less. This reduced figure should not, however, exceed 10% of his income from "remaining sources" without any deduction in respect of Life Insurance Premia, Prov. Fund contribution etc. in terms of Chapter VIA and Annuity paid under Section 280-0. To explain if the income from "remaining sources" is Rs. 30,000 the annual value of the dwelling house shall be limited to 10% of Rs. 30,000, i.e. Rs. 3,000. From this amount of Rs. 3,000 the statutory deduction for repairs and other expenses should be deducted to arrive at the net monetary equivalent of the dwelling house. To explain—

Salary & Allowances		Rs.	18,000
Interest on Securities			2,000
Income from Properties let out to tenants			10,000
			<hr/>
Income from remaining sources		Rs.	30,000
Dwelling House @ 10% of Rs. 30,000	Rs. 3,000		
Less Statutory Allowance for repair	500		2,500
			<hr/>
Total Income		Rs.	32,500

If the rental value of the dwelling house is Rs. 6,000 then the computation shall be on Rs. 4,200 (Rs. 6,000 less Rs. 1,800) but the amount shall be limited to Rs. 3,000 being 10% of the income from the "remaining sources" of Rs. 30,000. The net annual value shall of course be Rs. 2,500 (Rs. 3,000 less Rs. 500 for repair). If, on the other hand, the rental value of the dwelling house is Rs. 4,200 then the computation shall be on Rs. 2,400 (Rs. 4,200 less Rs. 1,800) as this amount is less than Rs. 3,000. The net annual value shall of course be Rs. 2,000 (Rs. 2,400 less Rs. 400 for repair).

Since a fictional person cannot physically reside, an assessee other than individual (including Hindu undivided family) is not entitled to claim any benefit under this provision.

If a residential house remains vacant and the owner is compelled to occupy a rented house for the purpose of his employment, business, profession or vocation, then the monetary value of the said residential house should be treated as NIL.

§ 4. Admissible deductions (Section 24) :

(a) Repairs—The allowance to be made on account of repairs has nothing to do with the period for which the house has been occupied. In India, the cost of repairs is a fixed proportion of the annual value and does not depend on the actual expenditure incurred as in the United Kingdom. Where the owner has to bear the cost of repairs, it is fixed at 1/6th of the annual value and it can neither be reduced nor increased by the Income-tax officer. Where the tenant has to bear the cost, the sum allowable is the difference between the annual value and the rent paid by the tenant upto, but not exceeding, 1/6th of the annual value.

(b) Insurance Premia—The only insurance deduction permissible, is the amount of the premia paid to insure against risk of damage or destruction of the property concerned. In some cases, owners insure against loss of rent.

ANSWER

Assessment year 1969-70

(a) 4 Asoka Avenue :

Annual Rent	Rs.	6,000
Less : Municipal Tax paid by the owner		900
Net Annual value	Rs.	5,100

(b) 14 Bidhan Bhawan :

4 Flats let out at Rs. 650 per month each		Rs.	31,200
Less : Municipal tax paid by the owner	Rs. 5,600		
Salary paid to the liftman and night watchman.	3,200		8,800
Net Annual value		Rs.	22,400

6 Gour Gardens :

Municipal Annual value determined in 1965 on the basis of rent less repair @ 10%	Rs.	13,500
Add : 1/9th of Rs. 13,500		1,500
	* Rs.	15,000
Less : Municipal tax paid by the owner		3,105
Net annual value	Rs.	11,895

Note : In determining the municipal value, the Corporation of Calcutta allows a deduction of 10% on account of repairs. The municipal value of Rs. 13,500 has, therefore, been increased by 1/9th of Rs. 13,500 i.e. Rs. 1,500.

(d) 18 Narendra Nagar :

Annual Rent	Rs.	3,000
Net Annual value	Rs.	3,000
No municipal tax was paid by the owner		

(e) 5 Radha Raman Road :

Rent from April, 1968 to March, 1969		Rs.	3,000
Less : Municipal tax paid by the owner	Rs. 450		
Special Concession under Section 23(1) 2nd Proviso	600		1,050
Net Annual value		Rs.	1,950

(f) 3 Sahid Street :

Municipal annual value determined in 1966 on the basis of rent less repair @ 10%	Rs.	9,000
Add : 1/9th of Rs. 9,000		1,000
Net Annual Value	* Rs.	10,000
No Municipal tax was paid by the owner.		

Illustration 2).

Mr. J. Joglekor (married) of 47 Cornwell Avenue owns several house properties at Calcutta which are let out to tenants. He also owns the house occupied by him, the annual value of which is Rs. 4,200. From the following statement of his account for the year ended 31st March, 1970, compute his total income.

To	Municipal taxes paid	Rs.	By	Rent of 28 Victoria Terrace (Municipal valuation Rs. 9,600) occupied for the whole year	Rs. 12,000
	47 Cornwell Avenue	300			
	28 Victoria Terrace	600			
	P42 Maidan Extension	1,200			
	18 Satyen Square	360		Rent of P42 Maidan Extension (Municipal valuation Rs. 24,000) occupied for 12 months	30,000
	23/1 Riverside Road	240			
	Ground rent for 18 Satyen Square	135			
	Land revenue for 23/1 Riverside Road	120		Rent of 18 Satyen Square (Municipal valuation Rs. 8,000) occupied for the whole year	9,600
	Repairs	5,120			
	Fire Insurance premium	940			
	Collection charges	600			
	Interest paid on overdraft resulting from construction of P42 Maidan Extension	3,000		Rent of 23/1 Riverside Road (Municipal valuation Rs. 4,800) occupied for 10 months	4,500
	Excess of income over expenditure	43,485			
		<u>Rs. 56,100</u>			<u>Rs. 56,100</u>

ANSWER

Computation of total income for the year ended 31st March, 1970.
Assessment year 1970-71.

Gross annual value of houses let out to tenants		
28 Victoria Terrace	Rs.	12,000
P42 Maidan Extension		30,000
18 Satyen Square		9,600
23/1 Riverside Road		5,400
	Rs.	<u>57,000</u>
Less : Municipal tax paid by the owner		
28 Victoria Terrace	Rs.	600
P42 Maidan Extension		1,200
18 Satyen Square		360
23/1 Riverside Road		240
		<u>2,400</u>
Net annual value of houses let out to tenants.	Carried over	Rs. 54,600

Brought forward		Rs. 54,600
Less : Statutory allowance for repairs @ 1/6th of the net annual value	Rs. 9,100	
Ground Rent for 18 Satyen Square	135	
Land Revenue for 23/1 Riverside Road	120	
Fire Insurance premium	940	
Collection charges	600	
Interest on overdraft	3,000	
Vacancy re : 20/1 Riverside Road (Rs. 5,400 less Rs. 240) ÷ 6	860 -	14,755
		<u>Rs. 39,845</u>
Add : Gross annual value of the dwelling house	Rs. 4,200	
Less : 50%—with a maximum	1,800	
	<u>Rs. 2,400</u>	
Less : Statutory allowance	400	2,000
Total income		<u>Rs. 41,845</u>
Rounded off		<u>Rs. 41,850</u>

Illustration: 22.

Mr. H. Hore (widower) of 17, Lansdowne Terrace, owns several house properties at Calcutta, which are let out to tenants. He also owns the house occupied by him, the municipal valuation of which is Rs. 6,000. From the following statement of his account for the year ended 31st March, 1970, compute his total income.

	Rs.		Rs.
To Municipal taxes paid		By Rent of 18 Lansdowne Terrace (Municipal Valuation Rs. 4,800) occupied for the whole year	6,000
17 Lansdowne Terrace	1,200	Rent of 12 Chowringhee Lane (Municipal valuation Rs. 12,000) occupied for 9 months	11,250
18 " "	1,080	Rent of 24 Lower Circular Road (Municipal valuation Rs. 3,000) occupied for 8 months	2,400
12 Chowringhee Lane	2,700	Rent of 30 Hirak Street (Municipal valuation Rs. 2,400) occupied for 10 months	2,250
24 Lower Circular Road	600		
30 Hirak Street	360		
Ground rent for 12 Chowringhee Lane	1,430		
Land Revenue for 30 Hirak St.	150		
Repairs	2,040		
Fire Insurance premia	1,410		
Collection charges	400		
Interest paid on overdraft resulting from constructing 30 Hirak St.	500		
Excess of income over expenditure	10,030		
	<u>Rs. 21,900</u>		<u>Rs. 21,900</u>

(Pages 110 and 111 should be read together)

Statement of Income

Serial	Name of St. & No. of property	Whether the property is occupied by the owner or is let out	Municipal valuation of the property	Full annual rent payable by the tenant	Municipal tax paid by the owner
1	2	3	4	5	6
1. 17	Lansdowne Terrace	Is occupied by the owner	Rs. 6,000	Rs.—	Rs.—
2. 18	do.	Is let out	4,800	6,000	1,080
3. 12	Chowringhee Lane	do.	12,000	15,000	2,700
4. 24	Lower Circular Road	do.	3,000	3,600	600
5. 30	Hirak St.	do.	2,400	2,700	360

Serial	Name of St. & No. of property	Ground Rent Paid	Land Revenue Paid	Collection Charges Paid	Vacancy allowance Claim (Proportion of Col. 7)
		11	12	13	14
1. 17	Lansdowne Terrace	—	—	—	—
2. 18	do.	—	—	—	—
3. 12	Chowringhee Lane	Rs. 1,430	—	Rs. 400	Rs. 3,075
4. 26	Lower Circular Road	—	—	—	1,000
5. 30	Hirak St.	—	Rs. 150	—	390

Note : Fire Insurance premia and Collection charges have been shown against 12 Chowringhee Lane for convenience.

from House Properties—Assessment year 1970-71

Annual letting value after adjusting Columns 5 & 6	One-sixth of the annual letting value as per Col. 7	Insurance premia paid	Int. on borrowed Capital	Name of St. & No. of Property
7	8	9	10	
Rs. 1,044*	Rs. 174		—	17 Lansdowne Terrace
4,920	820	—	—	18 do
12,300	2,050	Rs. 1,410	—	12 Chowringhee Lane
3,000	5,00	—	—	24 Lower Circular Road.
2,340	390	—	Rs. 500	30 Hirak St.

*10% of (Rs. 4,100+Rs. 3,935+Rs. 1,500+Rs. 910) = 10445

Period for which the property remained vacant	Total Columns 8 to 14	Net annual value assessable	Name of St. & No. of property
15	16	17	
—	Rs. 174	Rs. 870	17 Lansdowne Terrace
—	820	4,100	18 do.
3 months	8,365	3,935	12 Chowringhee Lane.
4 „	1,500	1,500	24 Lower Circular Road.
2 „	1,430	910	30 Hirak St.

Total income from House Properties=Rs. 11,315 Rounded off Rs. 11,320.

Revisional Problems—Question Nos. 21, 32, 33 and 45.

CHAPTER X

HEADS OF INCOME (Continued)

PROFITS AND GAINS OF BUSINESS, PROFESSION OR VOCATION (Sections 28 to 44)

§ 1. **Scope of the Sections**—Tax is payable by an assessee under this head in respect of the profits and gains of any business, profession or vocation carried on by him. The word 'business' has been defined in the income-tax Act as including any trade, commerce or manufacture. A "profession" on the other hand involves the idea of an occupation requiring purely intellectual skill or manual skill of the operator, as distinguished from an occupation which is substantially the production or sale of commodities. The income derived by a trade or professional organisation from specific services rendered for its members is also assessable under this head. Lastly, any compensation or other payment received by a person on the termination or variation of managing agency, commission agency or any other similar agency is taxable under this head. The Act does not contain any directions relating to the computation of profits generally, though there are several provisions in it relating to the admissibility of certain allowances and deductions.

After his retirement from Government service, the assessee (who was a Superintendent of Police) was spending his time in studying and teaching vedanta philosophy. Mr. Levy, who was one of his disciples used to come from England at regular intervals to attend his discourses and so received instructions in Vedanta Philosophy and had the benefit of his teachings. Mr. Levy transferred the entire balance standing to his credit in his own account at Bombay, amounting to more than Rs. 2 lakhs, to the account of the assessee opened in the latter's name in the same bank at Bombay. Thereafter, from time to time Mr. Levy put in further sums into the assessee's account in Bombay. The question was whether the receipts from Mr. Levy constituted the assessee's income from "vocation". It was held by the Hon'ble Supreme Court (i) that teaching was a vocation, if not a profession, and teaching vedanta philosophy was just as much teaching as any other teaching, and therefore a vocation, (ii) that the teaching of vedanta by the assessee was the carrying on of a vocation by him and that the imparting of the teaching was the *causa causans* of the making of the gifts by Mr. Levy that it was impossible to hold that the payments to the assessee had not been made in consideration of the teaching imparted by him, and that, therefore, the payments were taxable income arising from the vocation of the assessee. [I. T. R. Vol 35 (1959) page 48].

While Section 10(1) (old section) of the Indian Income-tax Act, 1922, imposes a charge on the profits or gains of a business, it does not provide how these profits are to be computed. Section 10(2) (old section) enumerates various items which are admissible as deductions but they are not exhaustive of all allowances which could be made in ascertaining the profits of a business taxable under Section 10(1) (old section). Profits and gains which are liable to be taxed under Section 10(1) (old section) are what are understood to be such under ordinary commercial principles. When a claim is made for a deduction for which there is no specific provision under Section 10(2) (old section) whether it is admissible or not will depend on whether, having regard to accepted commercial practice and trading principles, it can be said to arise out of the carrying on of the business and be incidental to it. The loss for which a deduc-

tion is claimed must be one that springs directly from the carrying on of the business and is incidental to it, and not any loss sustained by the assessee even if it has some connection with his business. If that is established, then the deduction must be allowed, provided that there is no provision against it, express or implied, in the Act. [I. T. R., Vol. 34 (1958), page 10] [Supreme Court decision]

Income-tax is a tax on the real income, i.e., in the case of a business, the profits arrived at on commercial principles subject to the provisions of the Income-tax Act. There is a clear cut distinction between deductions made for ascertaining the profits and distributions made out of profits. There is a further distinction between real profits ascertained on commercial principles and profits fixed by statute for a specified purpose. Under Section 10(1) (old section) of the Indian Income-tax Act, 1922, profits and gains of a business carried on by an assessee are not profits regulated by any statute, but profits in a business computed on commercial principles. They are business profits and not statutory profits. They are real profits and not notional profits. The real profits of a businessman under Section 10(1) (old section) cannot obviously include the amounts returned by him by way of rebate under statutory compulsion. It is as if he received only the original amount minus the amount to be returned. In substance there cannot be any difference between a businessman collecting from his constituents a sum of Rs. Y in addition to Rs. X by mistake and returning Rs. Y to them and another businessman collecting Rs. X alone. The amount returned is not a part of the profits at all.

The appellant-company carried on the business of distribution of electricity under a licence issued by the Government. By Section 57 (1) of the Electricity (Supply) Act, 1948, the provisions of Schedules VI and VII of that act were deemed to be incorporated in the licence. Schedule VI imposed a duty on the licensee to so adjust his rates for the sale of electricity by periodical revision that his clear profits in any year did not, as far as possible, exceed the amount of "reasonable return". If the clear profit in any year of account was in excess of the amount of reasonable return, one-third of such excess, not exceeding $7\frac{1}{2}$ per cent of the amount of reasonable return, was at the disposal of the licensee; one-half of the excess had to be either distributed in the form of proportional rebate on the amounts collected from the sale of electricity and meter rentals or carried forward in the accounts of the licensee for distribution to the consumers in future in such manner as the State Government might direct. During the accounting years relevant to the assessment years 1953-54 and 1954-55 the appellant set apart the sums of Rs. 42,148 and Rs. 77,138 respectively (which were under the provisions of the Act distributable to the consumers) and credited these sums to the "Consumers' Benefit Reserve Account", and claimed deduction of these sums in computing its profits liable to income-tax. It was held by the Hon'ble Supreme Court (1) that the amounts credited by the appellant during the accounting years to the "Consumers' Benefit Reserve Account" being a part of the excess amount paid to it and reserved to be returned to the consumers, did not form part of the appellant's real profits; and to arrive at the taxable income of the appellant from the business under Section 10 (1) (old section) of the Indian Income-tax Act, 1922, the amounts had to be deducted; (ii) that, as the appellant had adopted the mercantile system of accounting, the amounts so reserved for future payments were deductible in computing the income, profits and gains from the appellant's business for the relevant years, since the liability had occurred in these years. [I. T. R., Vol. 57 (1965), page 521]

Upon the dissolution of a firm constituted of two partners, by the death of

one of them on August 24, 1957, its business was taken over and continued by the surviving partner on his own account, without any interruption in the services of the employees or alteration in the terms of their employment. In setting the accounts of the firm as on August 24, 1957, a sum of Rs. 1,41,506 was taken into account as retrenchment compensation payable to the employees under Section 25FF of the Industrial Disputes Act, 1947, which would arise on a transfer of ownership. The question was whether the sum of Rs. 1,41,506 constituted an allowable expenditure in computing the income of the firm for the assessment year 1958-59.

It was held by the Hon'ble Supreme Court (without deciding whether the employees became entitled to retrenchment compensation), that the sum of Rs. 1,41,506 was not properly admissible either under Section 10 (1) (old section) or under Section 10 (2) (xv) (old section) of the Income-tax Act, 1922. The liability to pay retrenchment compensation under Section 25FF of the Industrial Disputes Act arose for the first time after the closure of the business and not before: it arose not in the carrying of the business but on account of the transfer of the business. During the entire period that the business was continued there was no liability to pay retrenchment compensation. The liability which arose on transfer, of the business was not a revenue nature and it could not be deducted under Section 10 (1) (old section). Similarly, since the liability under Section 25FF was wholly contingent and did not raise any definite obligation during the whole of the period that the business was carried on, it could not fall within the expression "expenditure laid out or expended wholly and exclusively for the purpose of the business" in Section 10 (2) (xv) (old section).

Broadly stated, the present value on commercial valuation of money to become due in future, under a definite obligation, will be a permissible outgoing or deduction in computing the taxable profits of a trader even if in certain conditions the obligation may cease to exist because of forfeiture of the right. Where, however, the obligation of the trader is purely contingent, no question of estimating its present value may arise, for to be a permissible outgoing or allowance, there must in the year of account be a present obligation capable of commercial valuation.

Profits of a business involve comparison between the state of the business at two specific dates. Normally the liability which occurs after the last date, unless its source is in a pre-existing definite obligation, cannot be regarded as a part of the outgoing of the business debitable in the profit and loss account. A deduction which is proper and necessary for ascertaining the balance of profits and gains of the business is undoubtedly properly allowable, but where a liability to make a payment arises not in the course of the business, not for the purpose of carrying on the business, but springs from the transfer of the business, it is not a properly debitable item in its profit and loss account as a revenue outgoing.

To be a permissible allowance under Section 10(2) (xv) (old section) the expenditure must be for the purpose of carrying on the business. Where accounts are maintained on the mercantile system, if liability to make the payment has arisen during the time the business is carried on, it may appropriately be regarded as expenditure. But where the liability is, during the whole of the period that the business is carried on, wholly contingent and does not raise any definite obligation during the time that the business is carried on, it cannot fall within the expression "expenditure laid out or expended wholly and exclusively" for the purpose of the business. [I. T. R., Vol. 65 (1967), page 643]

§ 2. Admissible Allowances :

(a) Rent of Premises [Section 30 (a)]—Rent paid for the premises in which the business, profession or vocation is carried on, is an admissible expense in computing the income under this head. Where a substantial part of the premises is used by the assessee for his own residence, the proportionate amount of the rent, as determined by the Income-tax Officer, should be disallowed. Where the premises is owned by the owner of the business, profession or vocation, no allowance on account of rent is permissible, but is admissible when paid to a partner. Where rent fluctuates with profits, it is still allowable ; but where it is designed to recoup the landlord for structural improvement, it is not deductible.

(b) Repairs to building, machinery, plant etc. (Sections 30 & 31)—Where the assessee is himself the owner of his business premises, the amount spent on repairs to the premises is allowed as an admissible expense. Where he is the tenant of the premises, the amount spent by him on repairs if his lease requires him to execute repairs, is allowed as a deduction. Current repairs as are required to keep the machinery, plant etc., in serviceable condition are also allowable. But expenditure which would have increased the capital value should be disallowed as capital expenditure. Initial repairs of second-hand machinery or of a ship, which is purchased in a state of repair, will be as much capital expenditure as it would have been, if the work had been executed by the seller and cost added to the ship, as such, they should be disallowed.

The expression 'current repairs' means expenditure on buildings, machinery, plant or furniture which is not for the purpose of renewal or restoration but is necessary only for the purpose of preserving or maintaining an already existing asset. The repairs should neither bring a new asset into existence nor give a new or different advantage to the owner of the business. [I. T. R., Vol. 30 (1956), page 338]. [Bombay High Court decision]

The nature of expenditure on any repairs claimed to have been effected has to be viewed as a whole and in the proper perspective, in order to determine whether such repairs have only had the effect of restoring the machinery to its original condition or whether they have introduced any additional advantage or features which have improved its income-earning capacity. It cannot be taken as a matter of assumption that merely because a large sum is expended on repairs it must necessarily amount to reconstruction.

The assessee incurred heavy expenditure in repairing their cargo boat. The repairs involved caulking, replacement of under-water planking and copper sheathing. As a result of the repairs the boat was not structurally altered nor was there any improvement in its loading capacity, performances or other features. It was held by the Hon'ble Madras High Court on the facts, that the expenditure was allowable under Section 10 (2) (v) (old section). [I. T. R., Vol. 49 (1963), page 188].

(c) Interest on Capital borrowed [Section 36 (1) (iii)]—Interest paid in respect of the capital which has been borrowed for the purposes of the business is admissible even if it varies with the amount of profits earned. But this allowance is not admissible in the case of interest chargeable under the Act, which is payable outside India, unless tax thereon has been paid, deducted or is recoverable from an agent under Section 163, except in the case of public loans issued before the 1st April, 1938. Interest paid to partners by firms

cannot be deducted, but interest paid to members of other associations is an admissible deduction. No allowance can be made for interest on share capital of companies, but interest on debentures is admissible.

To enable an assessee to claim an allowance for interest paid on Borrowed Capital, the following conditions must be fulfilled :—(1) The capital must have been borrowed by the assessee for the purpose of his business. (2) The assessee must have paid the amount as interest. If these conditions are satisfied, the Income-tax Authorities are bound to allow the amount ; they have no power to reduce the quantum paid as interest to anything considered reasonable by them on subjective or objective standards ; the fact that the stipulated rate of interest was variable and was dependent upon the rate of dividend declared by the company in the relevant year would not alter the nature of the transaction or make it anything other than loan. It is the quality of the interest that matters and not its admeasurement.

A private company with 21 shareholders was in urgent need of money to carry on its normal business and, as there was statutory restrictions on the further issue of Capital, passed a resolution authorising its managing agent to borrow money from the shareholders of the company who were willing to advance loans, to the extent of paid-up value of their holdings. The loans were to carry interest at the same rate as dividends declared in the corresponding years subject to a minimum rate of 6% per annum. Seventeen of the shareholders availed themselves of the offer and received for the years 1947, 1948 and 1949 interest at the rate at which dividends were declared in those years, viz 10%, 20% and 12%. The Income-tax Authorities disallowed the interest paid in excess of 6%. It was held by the Hon'ble Madras High Court that as the genuineness of borrowing of Capital for purpose of the business, and the fact of payment of the amounts claimed were not disputed, the disallowance of the interest in excess of 6% out of the amount paid was not justified in law. [I. T. R., Vol. 31 (1967), page 803].

A firm which carried on the business of bleaching, dyeing and printing cloth borrowed money in the year of account in order to extend its business, purchased land and erected additional plant and machinery and paid interest on the borrowed capital. The claim for deduction of the interest so paid was rejected on the ground that the plant and machinery was not used for the business in the year of account. It was held by the Hon'ble Bombay High Court that the firm was entitled to the deduction claimed, even though the plant and machinery were not used in the year of account. Where an assessee claims deduction of interest paid on capital borrowed, all that he has to show is that the capital which was borrowed was used for the purpose of the business in the relevant year of account. It does not matter whether the capital was borrowed to acquire a revenue asset or a capital asset ; further it is immaterial whether the uses of the capital actually yielded profit or not and it is not open to the Department to reject the claim in respect of the interest paid on that capital merely because the use of the capital is unremunerative. [I. T. R., Vol. 34 (1958), page 295].

(d) Insurance premia [Section 30(c)]—Allowance in respect of insurance premia is restricted to insurance policies taken out against the risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores used for the purposes of the particular business of which the profits or gains are being calculated, but no allowance can be made on account of premia in regard to other insurances. Further, any sums not actually expended on premia but

merely set aside by a company or firm as an insurance fund, are simply a particular description of reserve and no allowance or deduction can be given in respect of such reserves.

(e) Rates and Taxes [Section 30 (b)]—Land revenue, local rates or municipal taxes paid in respect of the portion of the premises used for the purposes of business, profession or vocation, are admissible expenses. In computing income from business, profession or vocation, a local rate or tax which is payable irrespective of whether profits are made or not, should be treated as expenditure incurred solely for the purpose of earning profits of the business, profession or vocation. No allowance can be given on account of any other rates or taxes whatsoever. All rates and taxes therefore, whether levied on profits of a business, profession or vocation or which are charged on the proprietor in respect of anything other than the actual portion of the premises used for the purposes of the business, profession or vocation, must be disallowed. Any sum paid on account of cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion or otherwise on the basis of such profits or gains should, therefore, be disallowed.

(f) Bonus or Commission to Employees [Section 36 (ii)]—Sums paid by way of bonus or commission to an employee for services rendered are allowable if such sum would not have been payable to him as profits or dividends and if it is of a reasonable amount with reference to the pay and conditions of his service, the profits of the business and the general practice in similar business, profession or vocation. The condition that it should not be payable as profit or dividends precludes the application of this concession to partners or shareholders. The various conditions laid down are intended to prevent collusive deduction in combination with influential employees.

The assessee paid a sum of Rs. 1,08,325-9-3 by way of profit bonus to its employees for the calendar year 1947 in terms of an award made on January 13, 1949, under the Industrial Disputes Act. It debited the amount in its profit and loss account for the year 1948, but in fact paid it to the employees in the calendar year 1949. It was held by the Hon'ble Supreme Court that it was only in 1949 that the claim to profit bonus was settled by an award of the Industrial Tribunal and the only year to which the liability under the award could be properly attributed was 1949 and that, therefore, the sum of Rs. 1,08,325-9-3 had to be deducted in the calendar year 1949 relevant to the assessment year 1950-51. An employer who follows the mercantile system of accounting incurs a liability towards profit bonus only when the claim, if made, is settled amicably or by industrial adjudication.

It was further observed by the Hon'ble Supreme Court that the profit bonus is strictly not wages, at least not for purposes of computing liability to income-tax. It is not an expense in the ordinary sense of the term, incurred for the purpose of earning profits. *A fortiori* profits have already been made. It is more like sharing the profits on the basis of a certain formula. [I. T. R., Vol. 53 (1964), page 134]

(g) Bad Debts and Irrecoverable Loans [Section 36 (vi)]—Allowance for the bad debts is made on the following conditions:—(i) It is allowed only where the accounts of the assessee are not kept on the cash basis; (ii) only such amount as has been taken into account in computing the income of the previous year or of an earlier previous year or represents money lent in the ordinary course of banking or money-lending business, is allowed; and (iii) the amount allowed must not exceed the amount actually written off in the accounts

of the assessee. If the amount ultimately recovered on such debt is greater than the difference between the whole debt and the amount so allowed, the excess will be deemed to be a profit of the year in which it is recovered and if less, the deficiency will be treated as a business expense.

The assessee carried on the business of "adatia" and "speculation". During the Samvat year 2003, one of the assessee's constituents incurred a loss of Rs. 14,960 in certain forward transaction in turmeric which the assessee had put through. That constituent was unable to pay the loss suffered by him and the loss fell on the assessee. In the Samvat year 2005, the constituent paid Rs. 4,000 to the assessee in full settlement of his debt and the assessee wrote off the balance of Rs. 10,960 as a bad debt. The assessee claimed deduction of the sum of Rs. 14,960 for the account year Samvat year 2003, but his claim was not allowed by the Appellate Assistant Commissioner who held that it had not become bad in the Samvat year 2003, but, as the assessee having attempted to recover it, had succeeded in recovering Rs.4,000 in the Samvat year 2005 and written off the balance, the balance could be claimed as a bad debt in the Samvat year 2005. The assessee repeated his claim for allowance of the loss for the Samvat year 2005. By the time the Supreme court had held that forward contracts in turmeric were illegal as the Spices Forward Control Prohibition order 1944, promulgated by the Government applied to it. The Income-tax Officer held that as the debt had arisen out of dealings in forbidden forward transactions in essential commodities, it was a debt which could not be enforced under the law and, therefore, it could not be considered to have become bad for income-tax purposes. The Appellate Assistant Commissioner affirmed his view. On further appeal, the Tribunal held that as the Appellate Assistant Commissioner had given a finding that the debt which was prematurely written off in the Samvat year 2003 would be a lawful deduction in the Samvat year 2005 it was not right for the department to disallow it in the latter year and further that, although the debt due to the assessee was not enforceable in law, the admissibility of the claim for deduction of the sum of Rs. 10,960 under Section 10 (2) (xi) or (xv) (old sections) of the Indian Income-tax Act, 1922, was not affected. That amount was a revenue deduction and had to be deducted before arriving at the assessable profits of the accounting year. The Tribunal, therefore, allowed the claim of the assessee. On a reference : It was held by the Hon'ble Bombay High Court (i) that the circumstances that the debt owing to the assessee from his constituent was not capable of being enforced in a court of law did not prevent the debt from being considered as irrecoverable or bad ; (ii) that, on the facts, the inability of the assessee to recover the dues from the constituent or their becoming bad was not as consequence of the decision of the Supreme Court, but by reason of the inability of the constituent to fulfil his obligation to pay, and, therefore, the sum of Rs. 10,960 became bad in the Samvat year 2005 and the assessee was entitled to deduct it in the computation of his business profits. Alternatively, as at the time when the forward transactions were entered into in the belief that the transactions were legal and the dues owing to the assessee in these transactions were considered by him as good and recoverable until it was decided by the Supreme Court that the transactions were illegal, with a consequence that the dues could not be recovered, if the constituent was either unable to pay the dues or refused to pay them because of the legal disability on the part of the assessee to recover them, the loss resulting from the transaction could be said to have fallen on the assessee at the point of time when the inability of the constituent or his refusal to pay occurred ; (iii) that, therefore, the Tribunal was right in holding that the assessee was entitled to have the amount allowed as a deduction in the Samvat year 2005.

If the profits of a trade, even though it may be illegal, are liable to be taxed under the taxing statute, the computation of the profits will have to be done in accordance with the mode prescribed by the statute. The circumstance that the business is illegal, so that neither the profits earned nor the losses suffered would be enforceable in law, is not a circumstance which detracts from the profits being taxed. Equally so should it not be a circumstance which could detract from the loss being allowed. Therefore, that the liability to the assessee is an unenforceable liability at law and therefore, would not constitute a debt in the sense of a claim which is legally enforceable, is not material in considering the deductibility of that claim in the matter of computation of the profits of the business of the assessee. Even in computing the profits of an illegal business, the expenses incurred in the running of the business, such as, for instance, the salaries to the employees or the rent paid for the premises occupied for the purposes of the business, would be certainly allowed in computing the profits of the business, although such amounts, if they were not paid could not be recovered in a court of law. [I. T. R., Vol. 49 (1963), page 931]

Whether a debt is bad and when it becomes such, are questions of facts to be determined in cases of disputes, not by the assessee or by the exercise of any option on his part, but by the Revenue Authorities on a consideration of all relevant and admissible evidence. The mere fact that a debt was incurred on a date beyond the period of limitation will not itself make a debt bad; still less will it fix the date at which a debt will become bad. A statute-barred debt is not necessarily bad; nor a non-statute-barred debt necessarily good. The age of the debt is, no doubt a relevant matter to be taken into consideration. It makes no difference whether the debt is due from a human being or joint stock company; in either case, it is a question of fact whether and when a debt becomes bad. There is no justification for treating all debts from companies as necessarily good merely because the debtor company has not gone into liquidation. The burden of proving that a debt has become bad lies on the assessee; so also the burden of proving that what is claimed as bad debt has already been taxed in an earlier year.

Irrecoverable Loans—When an assessment is made of profits or income from a banking or money-lending business, loans which cannot be recovered should be deducted from the assessed profits of such business at the time when such loan can be definitely proved to be irrecoverable. For example, if a Banker has lent out 5 lakhs of rupees and received Rs. 50,000 as interest but has during the same year lost an irrecoverable loan of Rs. 25,000, he should be assessed on Rs. 25,000. Similarly, if the same Banker receiving Rs. 1,00,000 as interest on his loans, suffers a loss of an irrecoverable loan amounting to one lakh during the same year, the income to be assessed to income-tax from the money-lending business in that year will be Nil. These examples will apply whether the assessee had previously been assessed to income-tax or not.

This instruction will also apply to the assessment of other traders, where loans have been made in connection with the business and in which the loans are of the nature of the business and the loss is a trading loss.

The irrecoverable loans in the sense referred to above are sometimes confused with "Bad Debts" but they are of a totally different nature. Money lent out on interest is the stock-in-trade of a money-lender or Banker and the loss of such stock-in-trade can clearly be regarded as a trading loss like the loss of the stock-in-trade of any other trader where the loss is not covered by insurance. In settling claims of this nature, the question has always to be

considered whether money-lending is or is not a part of the business of the trader in question. The investments of savings or occasional loans made to acquaintances cannot be considered to be loans made in the course of trading.

(h) Depreciation (Section 32)—There is no definition of “Depreciation”. The word is used in practice by Accountants in varying senses. Ordinarily it means wear and tear which cannot be made good by repairs. That is to say, it means the insidious and irreparable decay of the building, machinery, plants, etc.

The rates of depreciation are prescribed in Rule 5 (see **Appendix A**) and the information that must be furnished to obtain this allowance is set out in the form of return of income. The buildings, machinery, plant or furniture for which depreciation allowance is claimed must be the property of the assessee and must be used for any number of days for the purpose of the particular business in the relevant year the profits or gains of which are being computed. Moreover it can be claimed only in respect of the particular classes of buildings, machinery, plant or furniture which are mentioned in Rule 5. The word “Plant” includes Vehicles, Books, Scientific Apparatus and Surgical Equipments purchased for the purpose of the business, profession or vocation.

No allowance can be claimed in respect of any portion of a building which is used as a residence by the assessee. Buildings belonging to the owner of a business used by him to accommodate his employees, are buildings used for the purposes of business where the occupation by the employees is subservient to and necessary for the performance of their duties, irrespective of the fact that rent is charged by the owner or not. When machinery is kept ready for use at any moment in a particular factory under an express agreement, from which taxable profits are earned, the machinery can be said to be used for the purpose of business, although it is not actually worked and depreciation can be claimed in respect of such machinery. Depreciation can be claimed by the owner of a machinery even if it has been leased to another. Where buildings, machinery plant and furniture are let out on hire, the person who lets them shall be entitled not only to depreciation allowances but also all other allowances in respect of annual repairs, insurance premia and obsolescence.

Depreciation allowance in respect of ocean-going steamers and motor vessels is computed at certain percentage on the ‘actual cost’ thereof. The expression ‘actual cost’ includes the cost of freight, pay of engineers and staff who erect the machinery, put it in working order and carry out experiments to test it. Depreciation in respect of other assets is computed at certain percentage on the “written down value” thereof. The expression “written down value” is (i) in the case of assets acquired in the previous year, the actual cost to the assessee, and (ii) in the case of assets acquired before the previous year, the actual cost to him less all depreciation actually allowed to him in the earlier years.

Where plant and machineries work “double shift,” an extra depreciation allowance at the rate of 50% of the normal depreciation allowance is admissible. The calculations of this extra allowance for double-shift shall be made separately, proportionate to the number of days during which the double-shift working was performed. For the purpose of calculating this extra allowance the normal number of working days throughout the year shall be taken as 240 [or the actual number of days whichever is higher] and if, for example, a concern has worked double-shift for, say, 80 days, the extra allowance for double-shift shall be 1/3rd of 50% of the normal allowance for the whole

year. There may be cases where plant and machineries may work "triple shift" even. In such cases the extra shift allowance shall be equal to 100% of the normal allowance. To explain, where a concern has worked "double-shift for 80 days and "triple shift" for another 80 days, the extra allowance for "double-shift" shall be 1/3rd of 50% of the normal allowance for the whole year and the extra allowance for "triple shift" shall be 1/3rd of 100% of the normal allowance for the whole year. The extra shift allowance whether double or triple should, however, be deducted along with the normal depreciation allowance for the purpose of calculating "written down value" of the plant and machineries.

Revisional Problems—Question No 50

With a view to stimulate industrial activities, provision was made for initial depreciation in respect of buildings newly erected after the 31st March, 1961 for the purpose of residence of persons employed in the business and drawing a remuneration of less than Rs. 200 per month (with effect from the assessment year 1966-67 the amount has been increased to Rs. 7,500 per annum) or for the purpose of welfare of such employees in the shape of hospital, creche, school, canteen, library, recreational centre, shelter, rest-room or lunch room. The rate is 20% of the actual cost and is admissible only for the year of construction. This initial depreciation shall not be taken into account for the purpose of determining "written down value" in the succeeding year. It shall, however, be taken into account for calculating "obsolescence allowance" or 'balancing charges' as also for the purpose of calculating the total amount of depreciation admissible during the life time of the house not exceeding 100% of its actual cost.

With effect from the assessment year 1966-67, additions of machinery or plant costing less than Rs. 750 will be allowed in full as depreciation in respect of the year of acquisition.

As the scope of "obsolescence allowance" was extended to buildings at the time of demolition or destruction, and assessee might, for example, occupy a building as his residence for many years and when the time to scrap it was drawing near, bring it into use for the purpose of business, and scrap or demolish the building a year later to get an allowance of the whole of the difference between the actual cost and one year's depreciation allowance. To safeguard Government revenue, "written down value" in the case of buildings would now mean the actual cost to the assessee less the depreciation that would have been allowable at the existing rates and on the diminishing value basis as if the building had been used for the purposes of business from the date of its acquisition.

Where an assessee owns a number of business and the profits and gains of any one of them are insufficient to cover the full depreciation admissible on the buildings, machinery, plant etc. used for the purpose of that particular business, the excess depreciation can be set off against income which has accrued to the assessee from other heads of income. Where, however, full effect cannot be given, the allowance shall be added to the amount of the depreciation allowance of that year and so on for succeeding years. In carrying forward depreciation, losses should be set off before depreciation. The aggregate of depreciation allowances allowed year to year must not in any case exceed 100% of the actual cost to the assessee.

On a consideration of the provision of Section 10(1), Section 10(2)(vi)

proviso(b) and Section 24(1) and (2) (old sections), it appears that the depreciation allowance permitted under Section 10(2) (vi) is available in the first place in the computation of the income from the business in which the depreciation is given and is adjusted against the profits and gains of that business. If the depreciation allowance is larger than the profits or gains in that business so that an excess remains after the said profits and gains are absorbed such excess comes under Section 10(1) for absorption of the profits and gains of other business, if any, carried on by the assessee. If a balance from the depreciation allowance is left even thereafter that becomes available for set off against the income, profits and gains from any other head during that year. In case there is still a balance left over, it is taken to the following year, and if there is current depreciation for the following year, it is added on to that current depreciation and deemed a part of it, and if there is no current depreciation for the following year, the balance carried forward becomes the depreciation allowance for the following year available for the adjustment in the same manner as the current depreciation for the following year except that where there are also "carried forward losses", of the earlier years the said carried forward losses will be first absorbed against the profits and gains of the business before the carried forward part of the depreciation allowance is allowed to be adjusted. Except for this distinction between the carried forward part of the depreciation allowance and the current depreciation, there is no other distinction between them.

Unabsorbed depreciation does not lose its character when it is carried forward to the following year. In addition, unabsorbed depreciation carried forward cannot be treated on the same basis that it is "business loss carried forward." Accordingly, it was held by the Hon'ble Bombay High Court that the assessee who has income from business as well as income from house property in the current year was entitled to have not merely the business income but also the property income adjusted against the "unabsorbed depreciation carried forward" from an earlier year. [I. T. R., Vol. 49 (1963), page 145].

Where a person succeeds to a business, profession or vocation, the depreciation allowance due to the successor in respect of buildings, machinery etc. taken over by him from his predecessor should be worked out on the basis of the actual cost to the successor (not on the cost to the predecessor). The same applies where the person is not a successor but merely a purchaser. The successor is not entitled to take advantage of the unabsorbed depreciation which his predecessor might have been entitled to.

Revisional Problems—Question Nos. 25, 37, 49, 55, 57 and 59

(i) **Development rebate (Section 33)**—To encourage rapid industrialisation 'development rebate' was introduced in respect of new ship acquired and new plant and machinery installed after the 1st April, 1955. Office appliance and Road transport vehicles were, however, excluded from this rebate. The ships, plants and machineries in respect of which the rebate is admissible must be owned by the assessee and must be used wholly for the purposes of the business. The rate was 25% of the actual cost in respect of ships acquired before the 1st January, 1958 and 40% of the actual cost in respect of those acquired thereafter. In respect of plants and machineries installed before the first April, 1961 the rate was 25% of the actual cost and in respect of those installed during 1st April, 1961 and 31st March, 1965 the rate was 20% of the actual cost.

In respect of plants and machineries installed during 1st April, 1963

to 31st March, 1965 for the purpose of business of mining coal, the rate was 35% of the actual cost. In respect of plants and machineries installed during 1st April, 1965 to 31st March, 1970 for the purpose of business of construction, manufacture or production of any article specified in the list in the Fifth Schedule the rate is 35% of the actual cost. The rate is reduced to 25% in respect of plants and machineries installed after the 1st April, 1970. In respect of plants and machineries installed for the purpose of any other business during 1st April, 1965 to 31st March, 1970, the rate is 20% of the actual cost. The rate is reduced to 15% in respect of plants and machineries installed after the 1st April, 1970.

The rebate is admissible either for the year in which the acquisition or installation is made or for the immediately succeeding year. The development rebate is not taken into consideration for computing the maximum amount of depreciation or the balancing charges which in effect means that the total amount of depreciation, balancing charges and development rebate may be 125% or 140% of the actual cost of the ship and 130% or 125% or 120% or 115% as the case may be, of the actual cost of the plant and machinery.

This concession was further extended in respect of second-hand machinery, plant or ship acquired from non-residents or imported from outside India after the 31st March 1964. In the case of a ship, the rate is 20% of the actual cost ; in the case of a plant or machinery installed for the purpose of mining coal, the rate is 20% of the actual cost ; and lastly in the case of any other plant or machinery, the rate is 10% of the actual cost.

The development rebate was, however, withdrawn in respect of plants and machineries installed after the 31st March, 1965 in any office premises and residential accommodation including guest house.

Details of Development rebate.

Description	Date of acquisition or installation	Rate of Development Rebate
1. New ship	After 31st March, 1964	40%
2. New Plant and Machinery used in coal mining, and construction, production or manufacture of articles specified in the 5th Schedule to the Act.	Between 1st April, 1965 to 31st March, 1970	35%
3. Do.	Do. After 31st March, 1970	25%
4. Any other categories of new Plant and Machinery	Between 1st April, 1965 to 31st March, 1970.	20%
5. Do.	Do. After 31st March, 1970	15%
6. Old or second-hand ships imported (not used in India by a resident in India).	After 31st March, 1964	20%

Description	Date of acquisition or installation	Rate of Development Rebate
7. Old or second-hand Plant and Machinery imported for coal mining (not used in India previously by a resident in India).	After 31st March, 1964	20%
8. Old or second-hand Plant and Machinery imported (not used in India previously by a resident in India) other than coal mining.	Do.	10%

In the case of ships acquired or plant and machinery installed after the 31st December, 1957, the rebate is admissible only if 75% of the development rebate is debited in the Profit and Loss A/c for the relevant accounting year and credited to a Reserve Account out of which no dividend is distributed and no remittance outside India is made during eight subsequent years.

If the ship, or the plant or the machinery is sold or transferred by the assessee to any person other than the Government, a Local Authority, Corporation established by a Central, State or Provincial Act or a Government Company as defined in Section 617 of the Companies Act, 1956, within eight years from the end of the relevant previous year of acquisition or installation then the development rebate originally allowed by the Income-tax Authorities shall be deemed to have been wrongly allowed and the total income of the relative assessment year shall be recomputed. The recomputation should, however, be made within 4 years from the end of the previous year in which the sale or transfer took place. [Section 154(5)]

If the total income of the assessee (before making any deduction for development rebate) for the year of acquisition or installation is less than the development rebate, the difference can be carried forward to the next year and set off against the total income of the subsequent year. This carrying forward of development rebate is being allowed from the assessment year 1958-59 and the total period of carrying forward is restricted to eight years.

Revisional Problems —Question Nos. 49, 55, 57 and 59

(j) **Tea Development Allowance (Section 33A) :** In the assessment year 1965-66 a provision was made for granting development allowance in computing income from business of growing or manufacturing tea in India to the extent of 40% (increased to 50% in the assessment year 1966-67) of the actual cost of planting of tea in new area and 20% (increased to 30% in the assessment year 1966-67) of the actual cost of replacement or upkeep in existing areas. The actual cost of planting will include cost of preparing the land, cost of seeds, cuttings and nurseries and also the cost of upkeep of the area for 4 years including the previous year in which the land was prepared subject to a ceiling of Rs. 5,000 per acre if the land is in a hilly area and Rs. 4,000 per acre if the land is in any other area. The development allowance will be admissible in respect of the expenditure on planting commenced after the 31st March, 1965, and is completed before the 1st April, 1970. The allowance will be available in computing the income assessable for the assessment year relevant to the third succeeding "previous year" next following the "previous year" in which the land was prepared.

(k) Rehabilitation Allowance (Section 33B) : With effect from the assessment year 1967-68 provision was made for granting "rehabilitation allowance" in respect of any business of industrial undertaking, manufacturing or producing articles in India, being discontinued on account of extensive damage or destruction of any building, machinery plant or furniture as a direct result of any of the following circumstances—

- (1) flood, typhoon, hurricane, cyclone, earthquake or other convulsion nature, or
- (2) riot or civil disturbance, or
- (3) accidental fire or explosion, or
- (4) action by an enemy or action taken in combating an enemy (whether with or without a declaration of war).

The business should be re-established, reconstructed or revived within 3 years from the end of the previous year in which the business was discontinued. On fulfilling these conditions the assessee will be entitled to a deduction by way of "rehabilitation allowance" amounting to 60% of the "obsolescence allowance" (as explained below) admissible in terms of Section 32 (i)(iii) in respect of the building, machinery, plant or furniture damaged or destroyed. The deduction is admissible in computing the profits or gains of the previous year in which the business is re-established, reconstructed or revived.

(l) Export Market Development Allowance (Section 35B) : In the assessment year 1968-69 a provision was made for granting export market development allowance to a domestic company or a person (other than a company) resident in India in respect of expenses incurred after the 29th February, 1968 for development of export markets. The allowance is one and one-third times of the expenses incurred (1) on advertisement publicity outside India in respect of goods, services or facilities which the assessee deals in or provides in the course of his business activities ; (2) on obtaining information regarding foreign markets for such goods, services or facilities ; (3) on the maintenance of a branch office or agency abroad for the promotion of the sale of such goods, services or facilities ; (4) on the preparation and submission of tenders abroad for the supply or provision of such goods, service or facilities. Where a deduction is allowed under this head, no further deduction shall be allowed in respect of these expenses under any other head or any other assessment year.

(m) Agricultural Development Allowance (Section 35C) : In the assessment year 1968-69 provision was made for granting agricultural development allowance to companies engaged in the manufacture or processing of any product of agriculture, animal husbandry, dairy or poultry farming. The allowance is one and one-fifth times of the expenses incurred after the 29th February, 1968 in the provision of agricultural inputs and extension services to a cultivator, grower or producer in India of the agricultural raw materials used by the companies. The agricultural inputs may be by way of supply of fertilisers, seeds, pesticides, tools or implements. The extension services include dissemination of information on modern agricultural techniques and demonstration of such techniques or methods. Where a deduction is allowed under this head, no further deduction shall be allowed in respect of these expenses under any head for the same or any other assessment year.

(n) Obsolescence [Section 32 (1) (iii)]—Ordinarily the word is used to signify the unsuitability of a machinery or plant on account of its being out of

date. Whenever any machinery or plant is sold or discarded for whatever reason, a deduction in respect of obsolescence can be claimed ; and the amount to be allowed is the excess of the written down value over the sale price or the scrap value, as the case may be, provided the assets have been written off in the books of the assessee. Where the said price exceeds the written down value, this excess will be deemed to be profit of the year in which the sale takes place and will be included in the computation of income of that year [Section 41 (2)]

Revisional Problems—Question No. 43

In the assessment year 1946-47, the scope of this allowance was widened to include buildings and to permit the allowance being given in respect of a building, machinery or plant not only when it is sold or discarded but also when it is demolished or destroyed. The difference between the written down value (for this purpose the written down value is arrived at by deducting also the initial and additional depreciation allowance, if any) and the sale or scrap value is allowed as a deduction. But if any insurance, salvage or compensation are received in respect of these assets, these monies, if they are less than the written down value minus the scrap value, will be deducted from the allowance admissible and, if they are greater, the excess will be taxed to the extent of the difference between the actual cost and the written down value less the scrap value. If a machinery or plant is sold for more than its actual cost, the excess over the actual cost is taxable, as "Capital gains". In the assessment year 1962-63, the scope of this allowance was widened further to include furniture.

(o) **Dead or useless animals** [Section 36 (vi)]—A deduction is allowed in respect of animals used for the purposes of the business, which have died or become permanently useless. But animals which are the stock-in-trade of the business should not be included in this head. The amount allowable is the difference between the actual cost of the assessee and the amount, if any realised in respect of the animals and is admissible whether the animals are replaced or not.

(p) **Scientific Research** (Section 35)—Contributions made to Scientific Research Institutions and expenditure incurred on Scientific Research related to the business or the class of business carried on by the assessee is admissible irrespective of whether it is of a revenue or capital nature — the latter being allowable in five annual instalments if incurred by the assessee before 31.3.67. Expenses incurred after 1.4.67. will be allowed in one instalment. The allowance must relate to capital expenditure incurred by an assessee for carrying out Scientific Research in five consecutive "previous years" commencing with the "previous year" in which the expenditure was incurred or if the expenditure was incurred within three years (year here means a period of 12 months) prior to the date of commencement of the business, in five consecutive "previous years" beginning with the year in which the business was commenced. Allowance for capital expenditure which cannot be allowed in any year will be carried forward on the same basis as unabsorbed depreciation.

(q) **Family planning** [Section 36 (ix)]—Provision was made in the assessment year 1965-66 for a deduction of *bona fide* expenditure incurred by a company for promoting family planning amongst its employees. Where the expenditure is of a capital nature, one-fifth of such expenditure will be deducted in the "previous year" in which it was incurred and in each of the four immediately succeeding "previous years". Allowance for capital expenditure which cannot be deducted in any year will be carried forward on the same basis as unabsorbed depreciation.

(r) Entertainment Expenses [Section 37 (2)]—With effect from the assessment year 1962-63, entertainment expenses incurred by companies are admissible at the following rates—

- | | |
|--|---|
| (i) On the first Rs. 10,00,000 of the profits and gains of the business (computed before making any allowance for Development rebate or any entertainment expense) | At the rate of 1% with a minimum of Rs. 5,000 |
| (ii) On the next Rs. 40,00,00 of the profits and gains computed on the same basis | At the rate of $\frac{1}{2}\%$ |
| (iii) On the next Rs. 1,20,00,000 of the profits and gains computed on the same basis | At the rate of $\frac{1}{4}\%$ |
| (iv) On the balance | NIL |

The above rates have been reduced by 50% in respect of the expenses incurred after 30th September 1967. The entire expenditure incurred after 28th February, 1970, will be disallowed.

(e) Expenditure on Advertisement (Rule 6 B)

The admissible allowance with effect from 10th August 1966 shall not exceed—

- (1) in respect of articles intended for presentation—Rs. 50 on each such articles ;
- (2) in respect of any advertisement outside India involving payment in foreign Currency—the amount covered by foreign exchange granted to the assessee under Foreign Exchange Regulation Act, 1947 ;
- (3) in respect of any advertisement involving payment to a person who has a substantial interest in the business of the assessee or to a person who carries on the business or profession as a publicity agent or advertising agent or any relative of the assessee who has a substantial interest in the business or profession of such publicity or advertising agent—the amount which is excessive or unreasonable having regard to the legitimate business needs of the assessee.

Payments in respect of any advertisement exceeding Rs. 2,500 must be effected by a crossed cheque drawn on a bank or by a crossed bank draft otherwise the payment will be disallowed.

(t) Expenditure on residential accommodation including Guest-House (Rule 6 C)

The admissible allowance with effect from 10th August, 1966 shall be limited to the amount expended on the maintenance of—

- (1) one or more guest-house at the principal place of business or profession in India ;
- (2) where the assessee is engaged in the raising or processing of raw materials or the manufacture, processing or production of anything or is maintaining any industrial establishment employing not less than 50 wholtime employees, one or more guest-house at the place where any such operation is performed ;

- (3) in the case of a banking company, one or more guest-house in Bombay ;
- (4) in the case of any other assessee, one or more guest-houses at Delhi and at not more than two other places in India ;
- (5) where the assessee maintains one or more guest-houses at any place other than mentioned above for the exclusive use by the employees drawing "salary" not exceeding Rs. 1,000 per month.

Expenditures which provide any benefit or amenity or perquisite to an employee drawing annual "salary" of less than Rs. 7,500 will be allowed in full and in other cases it will be limited to 20% of the "salary" due to such employees in respect of the period of his occupation. In addition, the assessee must maintain a register showing details of the period of residence of the occupants. "Salary" in this case means the Basic Salary and Dearness Pay. (Rule 2 of Part "A" of the Fourth Schedule).

Expenditures incurred after 28th February 1970, will be disallowed except for the purpose of maintaining a holiday home for the employees.

(u) Expenditure in connection with Travelling etc. (Rule 6 D)

(1) The admissible allowance with effect from 10th August, 1966 in respect of travelling by an employee or any other person outside India shall be limited to the foreign exchange granted under Foreign Exchange Regulations and the amount expended on such travel in Indian Currency for the days mainly devoted by such employee for the purpose of the business or profession of the assessee. The proportionate amount of expenses incurred by the employee for his private purposes (along with the official purpose) will, however, be disallowed.

(2) The admissible allowance with effect from 10th August, 1966 in respect of travelling by an employee or any other person within India outside the headquarters shall be limited to

(i) in respect of travel by rail, road, waterway or air,	The expenditure actually incurred
(ii) in respect of employee drawing a salary of Rs. 1,000 or more per month	Rs. 100 per day or part thereof.
in respect of any other employees	Rs. 50 per day or part thereof.
in respect of any other persons	Amount calculated at the rates applicable in the case of the highest paid employee of the assessee.

If the stay is at Bombay, Calcutta or Delhi the above rates shall be increased by 50%. If the employee or any other person mentioned above stays free of charge in a guest-house maintained by the assessee the amount shall be calculated at one-third of the rates mentioned above, where, however, the occupant is provided lodging only free of charge the amount shall be calculated at one-half of the rates mentioned above.

(v) Patent rights or copyrights (Section 35A)—Capital expenditures incurred after the 28th February, 1966 on the acquisition of patent rights or copyrights used for the purpose of the business are allowed as a deduction in equal instalments over the unexpired period not exceeding 14. Where the full period of 14 years had expired before the acquisition of the rights, the en-

the cost of acquisition will be allowed in one instalment. If the rights are sold in future, the excess over the unallowed capital cost will be taxed in the year of sale, on the other hand, if the sale price is less than the unallowed capital cost the deficiency will be allowed as a deduction in full in the year of sale.

(w) Miscellaneous deductions [Section 37 (i)]—Any expenditure (not being in the nature of capital expenditure or expenses of the assessee) laid out or expended wholly and exclusively for the purpose of business, profession or vocation, should be allowed as a deduction from the computation of income under this head. Whether a particular expenditure has been incurred solely to earn the profits or whether it is capital expenditure depends in each case on the nature of the business, commercial practice, the nature of the expenditure and other relative circumstances. But unless, the expenditure is incurred for the purpose of the business, profession or vocation, profits of which are being assessed, it cannot be allowed. Moreover, the outlay in respect of which the deduction is claimed must be an expenditure incurred for the purposes of the business and not for a mere sharing of the profits, assessability to income-tax is attached as soon as profits accrue, and the Government is not concerned with the destination or application of the profits. A payment out of profits and conditional on profits being earned, cannot actually be described as a payment to earn profits. On the other hand, expenditure in the course of the trade which is unremunerative or in respect of an activity the income of which is not taxable is non-the-less a proper deduction if wholly and exclusively made for the purpose of the trade. It does not require a receipt on the credit side to justify the deduction.

There is much difference between expenditures laid out "for earning the income" and expenditures laid out "for the purpose of the business." The latter is wider in scope than the former. "For the purpose of the business" may take in not only the day-to-day running of the business but also the rationalisation of its administration and modernisation of its machinery; it may include measures for the preservation of business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile title; it may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for the carrying on of a business; it comprehend many other acts in the carrying on of the business. The expenditure incurred must be for the carrying on of the business and the assessee must incur it in his capacity as a person carrying on the business (otherwise than as agent of a third party). [I. T. R., Vol. 53 (1964), page 140] [Supreme Court decision]

The following instructions on the admissibility of certain expenses may be noted in this connection:

(i) Contributions to private Provident Funds by an employer are allowable if the Fund is constituted as an irrevocable trust and if no part of the employer's contributions can be recovered by him. If the fund remains in the hands or under the control of the employer, no contributions by him would be allowed as a deduction, but actual payments made to employees leaving the service would be allowed in the year in which such payments are made, in so far as such payments relate to the employer's contributions only. [Section 36 (iv)]

(ii) Contributions to private Super-annuation Funds by an employer are also allowable, if the Fund is constituted as an irrevocable trust and if no part of the employer's contribution can be recovered by him. If such a Fund remains in the hands or under the control of the employer, no contributions

by him will be allowed as a deduction but actual payments of pension to employees or to their widows or children should be allowed as a deduction when the pensionary payment is a fixed and recurring one. No claims on account of pensions will, however, be entertained when they are paid to persons who have or who at any time had a share of interest in the business, profession or vocation. [Section 36(iv)]

(iii) Premia paid by an employer to cover the risk of liability to compensate any of his employees for injuries under the Workmen's Compensation or Accident Insurance Act should be treated as business expenses and allowed as a deduction in assessing income from business.

(iv) The following principle should be observed in dealing with claims that *bona fide* expenditure for the welfare of the employees of a business should be allowed as a business expense. No contributions towards expenditure incurred by outside bodies which may benefit the employees of a company or firm incidentally with members of the general public, should be allowed, such as contribution for the support of clubs, recreation grounds, religious institutions, dispensaries, hospitals, schools and the like. If on the other hand, an assessee maintains a school or a dispensary solely for the benefit of his employees, reasonable expenditure on the upkeep of such an institution should be allowed as a business expense. Similarly, expenditure incurred for the maintenance of a conservancy staff employed to keep the surroundings of the dwellings of the employees of a concern in a sanitary condition should be allowed. In no case, however, should any capital expenditure be allowed, such as, for example, the amount expended on the construction of latrines, drains, water-works or hospitals.

(v) Sums embezzled by an employee while discharging his official duties, are an admissible charge against the business of his employer.

Cash is the stock-in-trade of a banking business and its loss in the course of the business under varying circumstances is deductible as a trading loss in computing the total income of the business. The retention of moneys in the premises of a bank to meet the demands of its constituents, which is a part of the operation of banking, carries with it the ordinary risk of being subject to embezzlement, theft, dacoity or destruction by fire etc., such risk of loss is incidental to the carrying on of the operations of banking business. A public company which carried on the business of banking, had branch at Ramnagar. In the usual course of its business large amounts were kept in various safes in the premises of that branch. At about 7 P.M. on June 11, 1951, there was a dacoity and the dacoits carried away cash amounting to Rs. 1,06,000 : It was held by the Hon'ble Supreme Court that the loss incurred by dacoity was incidental to the carrying on the business of banking and was deductible as a trading loss in computing the income from the banking business. [I. T. R., Vol. 55 (1965), page 707]

In order that loss of money may be regarded as trading loss and deducted in computing business profits the loss must be one that spring directly from the carrying on of the business or its operations and must be incidental to it. If the loss is incidental to the business and has occurred during business operations it has got to be taken into account in computing net profits and gains of an assessee under Section 10(1) (old section) of the Income-tax Act. The expressions "incidental" and "relevant" in relation to losses do not relate to the frequency of the happening of the risk or necessarily to its exposure to such risk, but to their nature and character, that is to say, loss must be connected with the

operation to produce income. [I. T. R., Vol. 61 (1966), page 308] [Patna High Court decision]

(vi) Assessee sometime receive from their constituents payments intended to cover railway expenses, cooly charges etc., which they have to incur in course of their business. When payments are made out of the sums and are debited specifically to constituents, they may be allowed as deductions from the assessable income, without insisting on strict proof of payment by the production of vouchers, provided that it is reasonably certain that the payments have been made.

(vii) Indian traders and businessmen charge their customers or clients a small fee on each transaction for example so many paise on each bag of some commodity sold, the proceeds of which are supposed to be devoted to various religious, charitable or educational purposes. Such customary subscriptions by clients and customers for religious or charitable (including educational) purpose, and the corresponding expenditure by the assessee, should be left out of account altogether in computing the taxable income provided that the Income-tax Officer is reasonably satisfied that the sums in question are really applied by the assessee ultimately (and not necessarily in the year of collection) to the object for which they were ostensibly collected. No attempt should be made to separate these subscriptions from the trade expenses of the customers or clients to whom they are charged and to disallow them as not being trade expenses.

(viii) Sums received for political purpose should be included in the income but the corresponding expenditure on these purposes should not be allowed as a deduction from taxable income.

(ix) Strictly speaking, the cost of audits and similar operations conducted specially for income-tax purposes whether in connection with appeals or with revision petitions cannot be allowed as deduction from taxable profits.

The reason for this is, of course, that whereas an audit or similar operation conducted in the ordinary course of business is properly treated as a 'business expense', it is clear that one conducted purely in connection with income-tax proceedings cannot be said to be incurred solely for the purpose of earning the profits or gains liable to income-tax. Since, however, there may be difficulty in individual case in determining whether an audit or similar operation has been conducted wholly or partly for business purpose and, in the latter case, what portion of the expenditure incurred in connection with it can properly be treated as a 'business expense', it has been decided that audit or other accountancy service in connection with an assessee's accounts for the previous year rendered before his return of income is made if such a return is made on the due date or within any extended period allowed by the Income-tax officer for its submission, should be treated as work done for ordinary business purposes and therefore, the expenditure incurred thereon should be regarded as an admissible deduction in computing taxable income. But expenses connected with subsequent proceedings before the higher authorities in Appeal, Review or High Court will not be allowed.

(x) The premiums received by a company on issue of shares are capital receipts and the cost of issuing shares is capital expenditure.

§ 3. Inadmissible expenses (Section 40)—The following allowances are not admissible in computing the income under this head :

(a) Any sum paid on account of a cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed as a proportion or otherwise on the basis of any such profits or gains.

(b) A payment which is chargeable under the head "Salaries" if it is payable without India unless tax has been paid thereon or deducted therefrom under Section 192.

(c) Interest, salary, commission or remuneration paid by a firm to any partner of the firm whether the firm is registered or unregistered.

(d) A payment to an unrecognised Provident Fund or other fund established for the benefit of the employees unless effective arrangements have been made to secure proper deduction to tax from any payments made from the fund which are chargeable under the head "Salaries".

(e) Any perquisite, benefit or amenity enjoyed by a director or a person who has substantial interest in the company which is, in the opinion of the Income-tax Officer, unreasonable having regard to the legitimate business requirements, even if the disallowed amount is taxable in the hands of the recipient.

(f) Any perquisite benefit or amenity enjoyed by an employee in excess of 20% of his salary after February, 1964 even if the disallowed amount is taxable in the hands of the recipient.

With effect from the assessment year 1969-70 the disallowance will be limited to 20% of the salary [as defined in clause (h) of Rule 2 of Part A of the Fourth Schedule] with a maximum of Rs. 1,000 per month. Further expenditure by way of repairs, maintenance etc. or allowance by way of depreciation in respect of any assets of the company provided to the employee for his benefit will also be included within the limit. Benefits, amenities or perquisites provided to employees drawing annual salaries, below Rs. 7,500 and gratuities, travel concessions, passage moneys, tax on the salary of a foreign technician, compensation, etc. will not be taken in applying the limit.

Under Departmental instructions (Central Board of Direct Taxes Circular No. 32 of 1969) salary, dearness allowance, bonus, commission or any other cash allowance payable to the employee in terms of his contract of service, would be regarded as salary under Section 17 (3) (ii) and not as "benefit or amenity" for the purpose of Section 40 (a) (v) of the Income-tax Act. Further, only those cash payments would be covered by the expression "perquisites, amenities and benefits" which are paid to the employee voluntarily and gratuitously and not in terms of the specific provisions of his contract of employment. In other words, the employee concerned should not have been in a position to enforce the payment of these amounts in a court of law.

(g) Any expenditure incurred after the 31st March, 1964 on account of advertisement, maintenance of any residential accommodation, travelling (including hotel expenses) shall be allowed only to the extent and subject to such conditions as may be prescribed by the Central Board of Direct Taxes. (Vide pages 127 and 128)

The assessee, which carried on the business of importing dates from abroad and selling them in India, imported dates from Iraq partly by steamer and partly by country craft, at a time when import of dates by steamer was prohibited. The dates which were imported by steamer were confiscated by the Customs authorities under Section 167 of the Sea Customs Act (item 8), and the assessee, being given an option under Section 183 of that Act to pay a fine, paid the fine and had the dates released. In computing its profits, the assessee sought to deduct the amount paid as fine as an allowable expenditure under Section 10 (2)

(xv) (old section) of the Income-tax Act. It was held by the Hon'ble Supreme Court that no expense which was paid by way of penalty, could be said to be an amount wholly and exclusively laid for the purpose of the business of the assessee within the meaning of Section 10 (2) (xv) (old section) of the Income-tax Act and the fine paid by the assessee was not an allowable deduction under that section. [I. T. R., Vol. 41 (1961), page 350]

§ 4. Payments to relatives (Section 40A)—In the assessment year 1968-69 provision was made for disallowance of payments made by an assessee to a relative or to an associate concern which is considered by the Income-tax Officer to be excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefits derived by him or accruing to him therefrom. In the case of individuals the relative means the husband, wife, brother or sister or any ascendant or descendant of that individual. In the case of a firm, Hindu undivided family or association of persons the relationship shall be reckoned with reference to the partner of the firm and members of the family or association. In the case of a company the relationship shall be reckoned with reference to directors or substantial shareholders.

§ 5 Remission of liability [Section 41 (1)]—Under general law trading liabilities allowed as a business expense in a year cannot be treated as income if remitted in any subsequent year. But any loss, expenditure or trading liability allowed in an earlier assessment will be taxable if any benefit accrues to the assessee by remission or cessation of liability. In other words, the Department will tax as income what it had already allowed as a deduction. But when a liability becomes time-barred, there is neither 'remission' nor 'cessation' of the liability, only the creditor's remedy becomes time-barred. Therefore, if any trading debt allowed as an expense in an earlier assessment becomes time-barred, the amount should not be taxed in that year.

Revisional Problems—Question No. 34

The assessee, a public limited company which carried on business of manufacturing textiles, maintained its accounts according to the mercantile system. The expenses for wages to the employees engaged for carrying on the business of the company were shown in the accounts as liabilities as and when they accrued irrespective of actual payment, and the entire sum so due was shown as a deduction in its accounts and was also allowed as such in the income-tax assessments made on the company. It sometimes happened that all the workers did not turn up to collect their dues and, consequently, a portion of the wages in each year remained unpaid and such unpaid wages used to be transferred to an account called "unpaid wages account". These unclaimed wages were shown as liabilities and formed part of the liabilities shown in the balance-sheets of each year under the heading "other finance". The Appellate Tribunal held with respect to some of the amounts so transferred to the unpaid wages accounts that the liability of the assessee-company in respect of these amounts had become time-barred as more than three years had already elapsed since those wages had become due, and as the creditors' legal remedies for recovery had ceased, the legal liability to pay also ceased and the provisions of Section 10 (2A) (old section) applied and such amounts could be added back as income. It was held, by the Hon'ble Gujrat High Court that a debt shown in a balance-sheet is an acknowledgement within the meaning of Section 19 of the Limitation Act, even though a balance-sheet is not addressed to any particular creditor. As the assessee-company used to acknowledge publicly its liability in respect of these unpaid wages in the balance-sheet at the end of each year, the

debt of the assessee-company in respect of these unclaimed and unpaid wages remained outstanding and the assessee-company continued to be liable to pay those amounts and Section 10 (2A) (old section) was not applicable. [I. T. R., Vol. 54 (1964), page 167]

Illustration 23.

Sri Indu Bhusan Bose (unmarried) prepared the following Profit and Loss Account of his cloth shop for the year ended 31st March, 1970. You are required to compute his total income.

Profit and Loss Account for the year ended 31st March, 1970.

To Salaries & wages	Rs.	12,400	By Gross Profit	Rs.	34,625
Rent, Rates etc.		1,600	Discount received		375
Household expenditure		3,100			
Income-tax		900			
Advertisement		800			
Postage & Telegrams		600			
Gifts & Presents		900			
Fire Insurance Premia		400			
Resv. for Doubtful Debts		800			
Interest on capital		600			
Audit Fees		400			
Net Profit transferred to Capital A/c.		12,500			
	Rs.	35,000		Rs.	35,000

ANSWER

Statement of total income for the year ended 31st March, 1970. Assessment year 1970-71

Net Profit as per Profit & Loss A/c.		Rs.	12,500
Add Inadmissible expenses—			
Household expenses	Rs.	3,100	
Income-tax		900	
Gifts & Presents		900	
Resv. for Doubtful Debts		800	
Interest on Capital		600	6,300
Total Income			Rs. 18,800

- Notes :**
- (1) Household expenses being personal expenses are disallowed.
 - (2) Income-tax paid in relation to income is disallowed.
 - (3) Gifts and presents being expenditure not for the purposes of business are disallowed.
 - (4) Reserve for Doubtful Debts is not allowed but actual Bad Debts are admissible.

Illustration 24.

From the following Trading and Profit and Loss Account of the Jogia Colliery Co. Ltd., for the year ended 31st March, 1970, compute its total income.

THE JOGTA COLLIERY CO., LTD.**Trading Account for the year ended 31st March, 1970.**

To Stock of coal (as at 1st April, 1969)	Rs.	60,000	By Sales	Rs.	31,00,000
Wages		19,40,000	Stock of coal (as at 31st March, 1970)		50,000
Electric Power		90,000			
Stores		1,20,000			
Rent, Royalty & Wayleaves		90,000			
Workmen's Compensation Insurance		75,000			
National Health Insurance		50,000			
Carriage on sales		80,000			
Gross profit carried down		6,45,000			
	Rs.	31,50,000		Rs.	31,50,000

Profit and Loss Account for the year ended 31st March, 1970

To Salaries	Rs.	1,20,000	By Gross profit brought down	Rs.	6,45,000
Office Rent		18,000	Discount		5,000
Sales Agency Commission		15,700			
Bonus to Employees		12,300			
Income-tax		12,800			
Fire Insurance		4,200			
Interest on Debentures		18,000			
Director's Fees		3,750			
Bank charges		2,250			
Resv. for Doubtful Debts		5,000			
Preliminary expenses written off		30,000			
Discount on issue of Debentures		15,000			
Depreciation :					
Boilers @ 10%	11,300				
Machinery @ 20%	6,000				
Shafts & Inclines @ 7%	13,200	30,500			
Net profit for the year		3,62,500			
	Rs.	6,50,000		Rs.	6,50,000

ANSWER

Statement of total income for the year ended 31st March, 1970
Assessment year 1970-71

Net profit as per Profit & Loss Account		Rs. 3,62,500
Add : Inadmissible expenses—		
Income-tax	Rs. 12,800	
Resv. for Doubtful Debts	5,000	
Preliminary Expenses	30,000	
Discount on the issue of Debentures	15,000	
Depreciation	30,500	93,300
	<hr/>	<hr/>
		Rs. 4,55,800
Less : Depreciation at the prescribed rates		
Boilers @ 10%	Rs. 11,300	
Underground machinery @ 15%	4,500	
Shafts & Inclines @ 10%	17,600	33,400
	<hr/>	<hr/>
Total Income		Rs. 4,22,400
		<hr/>

Notes : (1) Bonus to Employees—This is allowed being a regular payment made year after year to the employees in addition to their salaries.

(2) Preliminary expenses, discount on the issue of Debentures—These being capital expenses are inadmissible.

Illustration 25

A new machinery was installed by a Saw Mill on the 1st December, 1967 the cost being Rs. 20,00,000. Calculate the amount of depreciation and development rebate admissible for the assessment years 1968-1969, 1969-70 and 1970-71.

ANSWER**Accounting year 1.4.67 to 31.3.68****Assessment year 1968-69**

Actual cost as at 1.12.67	Rs. 20,00,000
Development Rebate @20% of Rs. 20,00,000	Rs. 4,00,000
Depreciation @ 10% Rs. 20,00,000 for half year	Rs. 1,00,000

Accounting year 1.4.68 to 31.3.69**Assessment year 1969-70**

Actual cost as at 1.12.67	Rs. 20,00,000
Less : Depreciation allowed in 1968-69 assessment	1,00,000
Written down value as at 1.4.68	Rs. 19,00,000
Depreciation @ 10% of Rs. 19,00,000	Rs. 1,90,000

Accounting year 1.4.69 to 31.3.70**Assessment year 1970-71**

Written down value as at 1.4.68	Rs. 19,00,000
Less : Depreciation allowed in 1969-70 assessment	1,90,000
Written down value as at 1.4.69	Rs. 17,10,000
Depreciation @ 10% of Rs. 17,10,000	Rs. 1,71,000

Illustration 26.

On the basis of the accounts overleaf, compute the total income of the Company for the assessment year 1970-71.

THE KUPER**Balance Sheet as at****LIABILITIES****Authorised Capital**

5,000 6% Preference Shares of Rs. 100 each		Rs. 5,00,000
50,000 Ordinary Shares of Rs. 10 each		5,00,000
		<u>Rs. 10,00,000</u>

Subscribed Capital

5,000 Preference Shares	Rs. 5,00,000	
25,000 Ordinary Shares	2,50,000	
	<u>Rs. 7,50,000</u>	
Less : Calls unpaid	5,000	Rs. 7,45,000
Loan Account		30,000
Sundry creditors for expenses and goods supplied		75,000
Employee's security deposit		5,000
Profit and Loss Account Balance from last account	Rs. 35,000	
Less : Preference Div. for the year ended 31-3-69	30,000	
	<u>Rs. 5,000</u>	

Add Net profit for the year ended 31.3.70	1,20,930	1,25,930
	<u>1,20,930</u>	
		<u>Rs. 9,80,930</u>

CHEMICAL CO., LTD.**31st March 1970.****ASSETS**

Land at cost			Rs. 1,75,000
Buildings (First class)	Rs. 2,50,000		
Additions on 1-4-69	9,875		
	<u>Rs. 2,59,875</u>		
Less : Depreciation @ 2·5%			
up to 31-3-69	Rs. 9,875		
For the year 2·5%	6,250	16,125	2,43,750
	<u> </u>	<u> </u>	
Chemical Machinery	Rs. 3,90,000		
Additions on 1-4-69	10,000		
	<u>Rs. 4,00,000</u>		
Less : Depreciation @ 10%			
up to 31-3-69	Rs. 47,500		
For the year @ 10%	35,250	82,750	3,17,250
	<u> </u>	<u> </u>	
Motor Lorries	Rs. 16,000		
Less : Depreciation @ 25%			
up to 31-3-69	Rs. 7,000		
For the year @ 30%	2,700	9,700	6,300
	<u> </u>	<u> </u>	
Furniture	Rs. 5,000		
Additions on 1-4-69	1,580		
	<u>Rs. 6,580</u>		
Less : Depreciation @ 10%			
up to 31-3-69	Rs. 580		
For the year	600	1,180	5,400
	<u> </u>	<u> </u>	
Stock in Trade			86,000
Sundry Debtors			90,000
Cash at Bank	Rs. 55,000		
Cash in hand	2,230		57,230
	<u> </u>	<u> </u>	
		Rs. 9,80,930	

THE KUEVER**Trading and Profit and Loss Account**

To stock as at 1st April, 1969	Rs.	70,000
Raw Materials		2,60,000
Wages		1,20,000
Packing materials		30,000
Fuel and Electric		15,000
Gross Profit		4,35,000
	Rs.	<u>9,30,000</u>
Establishment charges	Rs.	90,000
Advertisement & Propaganda		65,000
Travelling expenses		10,500
Delivery and conveyance		7,500
Rent and Taxes		8,600
Repairs and Renewals		6,400
Printing and Stationery		9,000
Postage and Telegrams		1,800
Telephone Charges		1,200
Income-tax		7,850
Interest on Loans		1,800
Fire Insurance Premia		2,700
Hospital fees of Employees		1,550
Removal charges to new premises		2,400
Bad Debts written off		7,000
Law charges		6,700
Miscellaneous expenses		12,600
Directors' & Auditors' Fees		3,490
Depreciation :		
Buildings	Rs. 6,250	
Machinery	35,250	
Lorries	2,700	
Furniture	600	44,800
		<u>23,180</u>
Managing Agents' commission		23,180
Net profit carried to Balance Sheet		<u>1,20,930</u>
	Rs.	<u>4,35,000</u>

Notes : (1) Miscellaneous expenses include donation of Rs. 2,000 to an unapproved institution and Rs. 750 lost through embezzlement by an employee.

(2) Law charges include Rs. 4,300 being cost of defending a suit brought against the company for encroachment on Municipal lands.

CHEMICAL CO., LTD.**for the year ended 31st March 1970.**

By Sales	Rs. 8,60,000	
Less : Returns	16,000	Rs. 8,44,000
	<hr/>	
Stock as at 31st March, 1970		86,000

By Gross profit

	<hr/>
Rs.	9,30,000
	<hr/>
Rs.	4,35,000

Rs. 4,35,000

ANSWER**Statement of total income for the year ended 31st March, 1970****Assessment year 1970-71**

Net profit as per Profit and Loss Account		Rs. 1,20,930
Add : Inadmissible expenses—		
Income-tax	Rs. 7,850	
Removal charges	2,400	
Law charges	4,300	
Donation	2,000	16,550
		<hr/>
Total Income		Rs. 1,37,480

§ 6. Rules for computing profits and gains of Tea Companies—Income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business, and 40 per cent of such income shall be deemed to be income, profits and gains liable to tax. In computing such income, an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted unless such area has previously been abandoned. Consequently, in assessing the profits of tea companies, there will be allowed, as a charge against profits, the whole of the upkeep (e. g., weeding and draining) of extensions of the estate which are not in bearing, but no capital expenditure in connection with such extensions. Once the cultivation has begun with the completion of the planting, the annual cost of the upkeep of such extensions should be allowed as a business expense even though the estate is not in bearing.

The question as to what is capital or revenue expenditure in respect of tea gardens is one the answer to which depends on certain general principles. The cost of the upkeep (e.g., weeding and draining) of an area that is not in bearing may be charged to revenue, while expenditure on the maintenance of an area that has not reached maturity may be classified as revenue expenditure, any income derived from the sale of tea at this stage is on the same footing as income from the sale of tea at other stage and should be taken into account in computing taxable income of the concern.

Under Section 15 of the Indian Tea Control Act, 1933 (now Section 31 of the Tea Act, 1953), the owner of a tea estate may transfer his right to obtain export licences in whole or in part to any party. Where the export or production quotas are transferred by the owner of a tea estate to which they appertain, the price realised should be treated as if it were income derived from the sale of tea grown and manufactured by the seller, and 40 per cent of the income derived from the sale of the rights will be held liable to tax. Where, however, a further transfer is made by a person other than the owner of the tea estate to which the quota has been allotted, whether or not such person is himself the owner of a tea estate to which another quota has been allotted, his profits on that transaction cannot in any sense be said to have resulted from the growth by him of tea and will have to be treated as wholly taxable in the assessment of the seller. The same applies to the profits made by an owner of a tea estate out of a transaction in which he buys a quota and uses it for the export of tea grown in an estate not his own (e.g., after manufacturing tea in his factory from green tea grown elsewhere). If a quota is purchased by the owner of another tea estate and is utilised by him for the exportation of tea grown on his own estate, such purchase enable the purchaser to market the product of his own tea estate and it follows that the cost of buying the quota will have to be debited to the income of the concern before apportionment under

Rule 7. Where the quota is purchased by a person who is not the owner of a tea estate or if purchased by the owner of a tea estate is resold by him, or is used by him for the export of tea grown on an estate not his own, the expenditure will be allowed in full in computing the purchaser's profits which, however, are not covered by Rule 8 and are, therefore, taxable in full.

In the assessment year 1965-66, a provision was made for granting development allowance in computing income from a business of growing or manufacturing tea in India to the extent of 40% (increased to 50% in the assessment year 1966-67) of the actual cost of planting of tea in new area and 20% (increased to 30% in the assessment year 1966-67) of the actual cost of replacement of upkeep in existing areas. The actual cost of planting will include cost of preparing the land, cost of seeds, cuttings and nurseries and also the cost of upkeep of the area for 4 years including the "previous year" in which the land was prepared subject to a ceiling of Rs. 5,000 per acre if the land is in a hilly area and Rs. 4,000 per acre if the land is in any other area. The development allowance will be admissible in respect of the expenditure on planting commenced after the 31st March, 1965, and is completed before the 1st April, 1970. The allowance will be available in computing the income assessable for the assessment year relevant to the third succeeding "previous year" next following the "previous year" in which the land was prepared.

In determining the amount chargeable to income-tax where the income is partially agricultural and partially from business (as in the case of sugar mills having own cultivation) the market value of the agricultural produce which has been raised by the assessee or received by him as rent-in-kind and which has been utilised as a raw material in such business or the sale receipts of which are included in the accounts of the business shall be deducted and no further deduction will be made in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent-in-kind. (Vide Rule 7 of the Income-tax Rules, 1962). [Revisional Problems—Question No 43]

Illustration 27.

From the following account of the Balacoba Tea Estates Ltd., compute its total income.

Garden Account for the year ended 31st March, 1970

General Charges	Rs.	By Transfer to Profit	
Superintendence	3,910	& Loss A/c	Rs. 44,726
Allowance	610	Transfer to De-	
Agency charges &		velopment A/c	409
visiting	1,824		
Cooly lines latrines			
& water supply	328		
Workmen's Comp.			
Insurance	68		
Medical & Sanitation	438		
Festival expenses	100		
Recruiting expenses	402		
Staff Provident			
Fund (Recog.)	492		
Dearness allowance	520	8,692	
Carried over	Rs. 8,692	Carried over	Rs. 45,135

Brought forward	Rs. 8,692	Brought forward	Rs. 45,135
Field works			
Nurseries and seeds	343		
Cart Roads & Bridges	105		
Estate paths & culverts	169		
Railings & Boundaries	73		
Bush Sanitation	106		
Pruning	530		
Weeding	1,460		
Cost of manure	1,540		
Pests and diseases	265		
Plucking including baskets	3,480		
Purchase of green leaf (1,04585 lbs)	11,041	19,112	
Crop Works			
Manufacture			
Factory Staff	650		
Labour	1,605		
Packing material	6,218		
Fuel for power	1,403		
" " drier	717		
Transport & storage	234		
Postage etc. on tea parcels	5,505		
Water supply	360		
Fire Insurance	230	16,922	
Capital A/c.			
Abandoned area replanted		409	
	Rs. 45,135		Rs. 45,135

Profit and Loss Account for the year ended 31st March, 1970

To amount transferred from Garden A/c	Rs. 44,726	63,960 lbs. tea sold 2,492 " " in stock	Rs. 59,262 2,495
Bonus of Staff	380	66,452 lbs. @ 93 P. Per lb.	Rs. 61,757
Debts and Advances written off	84	Sale of export rights for 32,727 lbs. out of the allotment for the year	6,333
Depreciation :			
Bungalow Rs. 958			
Cooly Lines 154			
Factory Bldgs. 312			
Tea Machinery 1,244			
Furniture 216	2,884		
Carried over	Rs. 48,074	Carried over	Rs. 68,090

	Brought forward Rs.	48,074	Brought forward Rs.	68,090
Profit for the				
year transferred		20,016		
to Balance-Sheet				
	Rs.	<u>68,090</u>	Rs.	<u>68,090</u>

Tea made from Estate Leaf	=40,008 lbs.
„ „ „ Bought Leaf	=26,444 „
	<u> </u>
Total tea made	<u>=66,452 lbs.</u>

The company is liable to pay tax on 40% of its profits from estate leaf and sale of export rights and on 100% of its profits from leaf bought from outside.

THE BALACOPA TEA ESTATES LTD

Balance Sheet as at 31st March, 1970

LIABILITIES		ASSETS	
Authorised Capital		Land at cost	
25,000 Ordinary shares of Rs. 10 each		Development A/c as at 31-3-69	Rs. 72,856
		Upkeep for the year	22,145
Paid-up Capital			
17,000 Ordinary shares of Rs. 10 each		Manager's Bungalow written down value as at 31-3-69	Rs. 33,382
Sundry Creditors		Additions on 1-4-69	4,920
Employee's Provident Fund Account			
Unclaimed Dividends			
Profits & Loss Account			
Balance from last year	Rs. 106	Less : Depreciation @ 2.5%	Rs. 38,302
Net profit for the year	20,016		958
		Cooly Lines written down value as at 31-3-69	Rs. 3,074
		Less : Depreciation @ 5%	154
		Tea Factory Building written down value as at 31-3-69	Rs. 6,232
		Less : Depreciation @ 5%	312
		Tea Machinery written down value as at 31-3-69	Rs. 8,294
		Less : Depreciation @ 15%	1,244
		Furniture written down value as at 31-3-69	Rs. 2,160
		Less : Depreciation @ 10%	216
		Stores at cost	
		Stock of tea	
		Book debts considered good	
		Cash at Bank	Rs. 36,512
		Cash in hand	2,967
			Rs. 2,00,000

ANSWER**Cost of manufacturing Bought leaf****Direct Charges**

Crop works	Rs.	16,922	
Depreciation on Factory and Machinery		1,058	Rs. 17,980
		<u> </u>	

Indirect charges

Superintendence	Rs.	3,910	
Allowances		610	
Agency charges and visiting		1,824	
		<u> </u>	
on Rs. 45,135*	Rs.	6,344	
		<u> </u>	
Therefore proportionate amount on	Rs.	16,922	2,519
		<u> </u>	
Upkeep of Cooly Lines etc.		328	
Workmen's Compensation Insurance		68	
Medical and sanitation		438	
Dep. on Bungalow, Lines and Furniture		1,328	
		<u> </u>	
On 10,508 Coolies*	Rs.	2,162	
		<u> </u>	
Therefore proportionate amount on 4,368 coolies—			898
Cost of manufacturing 66,452 lbs @ 32.2 P. per lb.			<u> </u>
			Rs. 21,397
Therefore cost of manufacturing 26,444 lbs. @ 32.2 P. per lb.			<u> </u>
			Rs. 8,514.96
			<u> </u>

Bought Leaf Account

To value of 1,04,585 lbs. Green leaf	Rs. 11,041 00	By Receipt from 26,444 lbs. tea made from bought leaf @ 93 P. per lb.	Rs. 24,952.92
Cost of manufacturing 26,444 lbs. bought leaf @ 32.2 P. per lb.	8,514 96		
Profit	5,036.96		
	<u> </u>		
	Rs. 24,592.92		Rs. 24,952.92
	<u> </u>		<u> </u>

* Assumed figures

Adjusted Profit and Loss Account for income-tax purposes

To General Charges	Rs. 8,692	Rs.	By Proceeds of 66,452 lbs. tea at 93 P. per lb.	Rs.	61,757
Field Works including bought leaf	19,112		Less : 26,444 lbs. tea from bought leaf (considered separately)		24,593
Crop works	16,922				
	<u>44,726</u>			Rs.	<u>37,164</u>
Less : Festival Expenses	100	44,626	Sale of export rights out of the allotments for the year		6,333
Bonus to Staff	—	380			
Bad Debts written off		84			
Depreciation		2,884			
		<u>47,974</u>			
Less : Value of green leaf purchased	11,041				
Cost of manufacturing bought leaf	8,515	19,556			
		<u>Rs. 28,418</u>			
Profit :		15,079			
		<u>Rs. 43,497</u>		Rs.	<u>43,497</u>

Statement of total income

40% of the profit from Estate leaf and sale of Export right—	Rs. 15,079	Rs.	6,032
Profit on manufacturing bought leaf			5,037
Total Income		Rs.	<u>11,069</u>

Revisional Problems

Question Nos. 22, 23, 29, 34, 35, 39 42, 43, 46, 48 and 56

CHAPTER XI

HEADS OF INCOME (Continued)

CAPITAL GAINS (Sections 45 to 55)

§ 1. **Scope of the Sections**—Tax is payable by an assessee in respect of profits and gains arising from sale, exchange, relinquishment or transfer of a Capital asset after the 31st March, 1956. Capital asset has been defined in Section 2 (14) meaning any kind of property excluding personal effects (wearing apparel, jewellery and furniture), stock-in-trade, consumable stores and raw materials, held for the purpose of business, profession or vocation and agricultural land in India. With effect from the 1st March, 1970, agricultural lands situated within any municipalities, municipal corporations, town committees, town area committees, notified area committees having a population of more than 10,000 have been included in the capital asset. The profits and gains shall be deemed to be income of the year in which the sale, exchange, relinquishment or transfer shall take place.

With effect from the Assessment year 1962-63, "Capital Asset" has been divided into two categories ; "Short-term Capital Asset" and "Long-term Capital Asset". The former means a Capital asset held by an assessee for less than 12 months immediately preceding the date of sale, exchange or transfer. "Long-term Capital Asset" consequently means a Capital asset held by an assessee for more than 12 months. With effect from the assessment year 1969-70 this period has been extended to 24 months.

§ 2. **Exemptions**—The following shall not be treated as sale, exchange, relinquishment or transfer for the purpose of computing Capital gains—

(a) Distribution of Capital assets on total or partial partition of a Hindu undivided family or under a deed of gift, bequest or Will.

(b) Transfer of Capital asset by a principal company to a 100% subsidiary company registered under the Indian Companies Act, 1956.

Assets distributed by a company in liquidation to its shareholders shall not be regarded as a transfer for the purpose of "Capital Gains" but the shareholders will be chargeable under the head "Capital Gains" on the difference between the market value of the assets on the date of distribution and the cost of acquisition of the shares to them.

§ 3. **Computation of the Capital gain**—The amount of Capital gain shall be computed after making the following deductions from the full value of the consideration for which the sale, exchange, relinquishment or transfer is made.

(a) Expenditure incurred solely for such sale, exchange, relinquishment or transfer.

(b) The actual cost to the assessee of the Capital asset plus any expenditure of capital nature incurred in making any additions or alterations thereto. If the actual cost cannot be ascertained, the fair market value as on the 1st January, 1954 may be substituted.

§ 4. **Profits arising from sale of "Short-term Capital Asset"**—Profits arising to all categories of assessees from sale of "Short-term Capital Asset" should be included in the total income of the assessee like any other heads of income. To illustrate—

Income from House property	Rs.	16,000
Profit from sale of "Short-Term Capital Asset"		12,000

Total Income	Rs.	28,000
[Revisional Problems—Question No. 55]		

§ 5. Losses arising from sale of "Short-term Capital Asset" (Section 74)— Loss arising to all categories of assessee from sale of "Short-term Capital Asset" can be set off against profit arising from sale of any other "Short-term Capital Asset" and any "Other heads of income" thereafter in the same assessment year. If this loss cannot be wholly set off in one year, it shall be carried forward to the succeeding year and set off against the profit arising from sale of "Short-term Capital Asset" of that year only and so on. The total period of carrying forward this loss is restricted to eight years only. To illustrate—

Income from House property	Rs.	10,000
Loss from sale of "Short-term Capital Asset"		6,000
		<hr/>
Total Income	Rs.	4,000
		<hr/>
Income from House property	Rs.	10,000
Loss from sale of "Short-term Capital Asset"		16,000
		<hr/>
Carried over to the succeeding year	Loss Rs.	6,000
		<hr/>

§ 6. Profits arising from sale of "Long-term Capital Asset" (Section 80T)— Profit arising to an assessee other than a company from sale of "Long-term Capital Asset" should be included in the total income of the assessee. If the total amount of profit under this head is less than Rs. 5,000, then it shall be ignored for all purposes. In addition, if the total income from all sources (including profit arising from "Short-term Capital Asset" and "Long-term Capital Asset") is less than Rs. 10,000, then, even if the profit arising from sale of "Long-term Capital Asset" is more than Rs. 5,000, no tax is payable in respect of the profit arising from "Long-term Capital Asset." To illustrate—

Income from House property	Rs.	10,000
Profit from sale of "Short-term Capital Asset"		3,000
Profit from sale of "Long-term Capital Asset"		4,500
		<hr/>
Gross Total Income	Rs.	17,500
Less : Profit from sale of "Long-term Capital Asset"		4,500
		<hr/>
Total Income	Rs.	13,000
		<hr/>

Profit from sale of "Long-term Capital Asset" will not be included in the computation of total income as the amount is less than Rs. 5,000.

Income from House property	Rs.	2,000
Profit from sale of "Short-term Capital Asset"		2,000
Profit from sale of "Long-term Capital Asset"		5,800
		<hr/>
Gross Total Income	Rs.	9,800
Less : Profit from sale of "Long-term Capital Asset"		5,800
		<hr/>
Total Income	Rs.	4,000
		<hr/>

Profit from sale of "Long-term Capital Asset" will not be included in the computation of total income as the gross total income is less than Rs. 10,000.

With effect from the assessment year 1964-65, "Long-term Capital Asset" was sub-divided into two groups : (1) assets comprising of lands or buildings,

and (2) assets other than lands and buildings i.e., shares, securities etc. In addition, the first Rs. 5,000 of the Capital gains arising from sale of "Long-term Capital Asset" became non-taxable with effect from the Assessment year 1964-65. If Capital gains arise from both groups of assets in the same accounting year the non-taxable portion of Rs. 5,000 will be allocated entirely against the profit arising from sale of "Long-term Capital asset" comprising of lands or buildings.

With effect from the assessment year 1968-69 if the gross total income of the assessee is more than Rs. 10,000 then the first Rs. 5,000 of the profits arising from sale of "Long-term Capital asset" comprising of lands or buildings and 45% of the balance should be excluded from the computation of the gross total income. If the gross total income of the assessee is more than Rs. 10,000 and the assessee has no income arising from sale of "Long-term Capital asset" comprising of lands or buildings, then the first Rs. 5,000 of the profits arising from sale of "Long-term Capital asset" comprising other than lands or buildings i.e. shares, securities etc., and 65% of the balance shall be excluded from the computation of the gross total income. To illustrate—

Income from House properties		Rs.	15,000
Profit from Sale of "Long-term Capital asset"—"Buildings"	Rs.	15,000	
Less : 1st Rs. 5,000		5,000	
	Rs.	10,000	
Less : 45% of Rs. 10,000		4,500	5,500
Total Income		Rs.	20,500
Income from House properties		Rs.	15,000
Profit from Sale of "Long-term Capital Asset"—"Shares & Securities"	Rs.	15,000	
Less : 1st Rs. 5,000		5,000	
	Rs.	10,000	
Less : 65% of Rs. 10,000		6,500	3,500
Total Income		Rs.	18,500
Income from House properties		Rs.	15,000
Profit from Sale of "Long-term Capital Asset"—"Buildings"	Rs.	15,000	
Less ; 1st Rs. 5,000		5,000	
	Rs.	10,000	
Less : 45% of Rs. 10,000		4,500	5,500
Profit arising from Sale of "Long-term Capital Asset"—"Shares & Securities"	Rs.	10,000	
Less ; 65% of Rs. 10,000		6,500	3,500
Total Income		Rs.	24,000

[Revisional Problems—Question No. 49]

§ 7. Loss arising from sale of "Long-term Capital Asset" (Section 74)—
Loss arising to all categories of assesseees from sale of "Long-term Capital Asset"

can be set off against profit arising from sale of any other "Long-term Capital Asset" in the same assessment year. If the amount of loss is less than Rs. 5,000, then it shall be ignored in the case of an assessee other than a company. If this loss of more than Rs. 5,000 cannot be wholly set off in one year, it shall be carried forward to the succeeding year and set off against the profit arising from sale of "Long-term Capital Asset" of that year only and so on. The total period of carrying forward this loss of more than Rs. 5,000 is restricted to four years only.

§ 8. Capital Gains tax payable by Companies (Section 115)—With effect from the assessment year 1965-66, super-tax was merged with income-tax. Consequently, income-tax payable on the profit arising from sale of "Long-term Capital Asset" comprising of buildings and lands was fixed at 40% thereof. Income-tax payable on the profit arising from sale of "Long-term Capital Asset", other than buildings or lands was fixed at 30% thereof. Income-tax payable on the profit arising from sale of "short-term Capital Asset" and other income was fixed at the rate applicable in the relevant assessment year.

Illustration 28

Calculate the amount of tax payable by Sri Kalyan Kumar Kar on the basis of income for the ended 31st March, 1970. Sri Kar is unmarried.

Income arising from House properties		Rs.	12,500
Profit arising from sale of "Short-term Capital Asset"			17,500
Profit arising from sale of "Long-term Capital Asset"			
Buildings	Rs.	18,000	
Shares		12,000	30,000
			<hr/>
Total Income		Rs.	60,000

ANSWER

Income arising from House properties		Rs.	12,500
Profit arising from sale of "Short-term Capital Asset"			17,500
Profit arising from sale of "Long-term Capital Asset"			
Buildings	Rs.	18,000	
Less : Rs. 5000 @ 100%	Rs. 5,000		
13,000 @ 45%	5,850	10,850	Rs. 7,150
		<hr/>	
Shares	Rs.	12,000	
Less : Rs. 12,000 @ 65%		7,800	4,200
		<hr/>	<hr/>
Total Income from all sources		Rs.	41,350

Income-tax payable on Rs. 41,350 at the rates ruling in the Assessment year 1970-71

Rs. 30,000	Rs. 6,250	
11,350 @ 50%	5,675	
	<hr/>	
	Rs. 11,925	
Less : Personal allowance	125	Rs. 11,800
	<hr/>	
Special surcharge payable : 10% of Rs. 11,800		1,180
		<hr/>
Total amount payable	Rs.	12,980

CHAPTER XII

HEADS OF INCOME (Continued)

INCOME FROM OTHER SOURCES (Sections 56 to 59)

§ 1. **Scope of the Sections**—Tax is payable under this head by an assessee in respect of income, profits and gains of every kind which may be included in his total income and which is not included under the head 'Salaries', 'Interest on securities', 'Income from House properties' or 'Profits and gains of business, profession or vocation'. It is obviously a residuary section, and includes the following kinds of income—dividends from companies, interest on mortgages, loans, fixed deposits and current accounts, ground rents, mine rents, surface rents and royalties, income from leasehold properties and bustee lands.

Income from licences granted to brick-makers to erect kilns upon his land and take away brick-earth for making bricks is assessable under this head. Income from the settlement of the right to collect the particular kind of earth in a particular area during a particular season for the purpose of extracting Saltpetre, where it is of a recurring nature is similar to rent and royalties from the letting of coal and other minerals and is liable to be taxed as income from other sources. Income from dramatic troupe maintained by an assessee (other than hobby) is assessable under this head. Income from Treasury Bills is also assessable under this head.

Income, profits and gains chargeable under this head are computed after making allowance for an expenditure incurred solely for the purpose of earning such income. It must be incurred in the year in respect of which the income profits and gains are assessable. Capital expenditure and personal expenses of the assessee are, however, not allowed to be deducted under this head. This expenditure is also not admissible in respect of any salary or interest chargeable under the Act, which is payable outside India, unless tax has been paid or deducted as source, except in the case of public loans issued before the 1st April, 1938.

§ 2. **Dividends from Companies [Sections 2(22) and 8]**—Dividend represents distribution of profit of a Joint Stock Company. For the purposes of Indian income-tax, dividend includes several classes of distribution which are not regarded as dividends for the purposes of the Companies Act. The following kinds of advantages received by shareholders from companies are liable to Indian income-tax—(i) Distribution of accumulated profit, by way of releasing of all or any part of the assets of the company. It may be distributed in cash or in the shape of shares of another company. (ii) Distribution of debentures, debenture stock or deposit certificates with or without interest and bonus shares to Preference Shareholders to the extent to which the company possesses accumulated profits. The question whether the distribution entails the release of any assets of the company or not, does not arise in this case. (iii) Distribution of accumulated profits on the liquidation of the company to the extent the company had accumulated profits (whether capitalised or not) on the date of liquidation. (iv) Distribution of accumulated profits by way of the reduction of the ordinary capital. The object of this clause is to prevent the distribution of profits in the guise of reduction of capital and thus to allow the shareholders to escape higher rate of income-tax. (v) In addition, the following categories of payments will also be treated as dividends. (a) Advance or loan to a shareholder who has obtained the beneficial use of the money. The fact that the loan is repayable or has actually been repaid subsequently by the share-

holder concerned is totally irrelevant. (b) Any payment on behalf of a shareholder or for his individual benefit. In this case, payment must be effected in cash. Provision of a rent-free house to a shareholder will not come under this clause, although the same may be chargeable otherwise. If the company pays cash for upkeep of the garden attached to the said house, the payment will be treated as dividend, as a benefit enjoyed by the shareholder. These provisions, however, will apply only to those companies having accumulated profits in which the public are not substantially interested and the shareholder must be the beneficial owner of share carrying not less than 20% of the voting power.

Repayment of the share issued for full cash consideration, either on its liquidation, or on reduction of its capital is purely a return of capital and as such cannot be treated as dividend. Similarly, where an advance or loan has been made to a shareholder by a company in the course of ordinary money-lending or banking business, it cannot be treated as dividend. Finally, where a company declares a dividend against which the loan outstanding (previously treated as dividend) is wholly or partly set off, the actual dividend received by the shareholder should be reduced by the amount set off, the balance being treated as dividend on the latter occasion. Accumulated profits shall always exclude Capital gains arising before the 1st April, 1946 and between 1st April, 1948 to 31st March, 1956 when they were not liable to income-tax.

Dividends shall be deemed to be the income of the year in which they are declared, paid or distributed. If a dividend is declared on the 15th April, 1966, in respect of the profit for the year ended 31st December, 1965 then it should be deemed to be the income of the year 1966-67. The company shall deduct income-tax at the prescribed rates from the amount of dividend at the time of payment. (Vide Chapter XXI § 1)

Article 74 of the articles of association of a company provided "when in their opinion the profits of the company permit, the directors may declared an interim dividend." Pursuant to this article the board of directors of the company declared an interim dividend at their meeting dated August 30, 1950, and the assessee, which was a shareholder in the company, was paid by a dividend warrant issued on December 28, 1950. The date of the meeting of the board of directors fell within the assessee's accounting year ending on September 30, 1950, relevant to the assessment year 1951-52, and the date of the dividend warrant fell within the next accounting year ending September 30, 1951, relevant to the assessment year 1952-53, and the question was in which of those years the dividend was liable to be included :

It was held by the Hon'ble Supreme Court (i) that the rule that when a company declared a dividend on its share a debt immediately became payable to each shareholder in respect of his dividend, applied only in the case of dividends declared by the company in general meeting. A mere resolution of the directors resolving to pay a certain amount as interim dividend did not create a debt enforceable against the company for it was always open to the directors themselves to rescind the resolution before payment of the dividend. The fact that the articles of the company authorised the directors to declare an interim dividend and not to pay an interim dividend as provided in regulation 95 of Table A of Indian Companies Act, 1913, made no difference in the true character of the right arising in favour of the members of the company on the exercise by the board of directors of the power. (ii) That the legislature had not made dividend income taxable in the year in which it became due by the express words of Section 16(2) (old section) it was taxable only in the year in which it was paid, credited or distributed or was deemed to be

paid, credited or distributed. (iii) That the expression "paid" in Section 16(2) (old section) did not contemplate actual receipt of the dividend by the member. In general, dividend could be said to be paid within the meaning of Section 16(2) (old section) when the company discharged its liability and made the amount of dividend unconditionally available to the member entitled thereto. (iv) That the dividend had to be included in the assessment year 1952-53. [I.T.R., Vol. 53 (1961), page 83]

The assessee held shares in a company to which profits accrued in India and in Pakistan. By a resolution passed at a general meeting held on October 14, 1952, a dividend was declared but by the same resolution it was provided that half of the amount of the dividend was payable or on after October 16, 1952, and the other half was postponed for payment within two months from the date on which remittance from Pakistan became free and the moneys were actually received. The company had debited the aggregate amount of the dividends in its profit and loss account and credited the moiety postponed for payment to the dividend account.

It was held by the Hon'ble Supreme Court that the moiety of the dividend that was postponed for payment after money were remitted from Pakistan could not be included in the total income of the assessee for the accounting year relevant to the assessment year 1953-54, as it was neither paid nor credited to the assessee. In order that dividend may be said to be "credited" within the meaning of Section 16 (2) (old section) of the Indian Income-tax Act, 1922, the credit must be in such form that the dividend is unconditionally available to the member. [I.T.R., Vol. 55 (1965), page 699]

On December 16, 1953, the appellant-company (Punjab Distilling Industries Ltd.) passed a special resolution for the reduction of its share capital from Rs. 25 lakhs to Rs. 15 lakhs, the High Court confirmed the resolution on August 6, 1954 and the Registrar of Companies issued the requisite certificate under Section 61(4) of the Indian Companies Act, 1913, on November 4, 1954. The company issued notices to its shareholders on November 5, 1954, inviting applications, appropriate debit entries were made in the accounts of the shareholders and the amounts were actually paid during the accounting year, December 1, 1954 to November 30, 1955, relevant to the assessment year 1956-57. In its assessment for that year, the Income-tax Officer held that dividend within the meaning of Section 2(6A) (d) (old section) of the Income-tax Act, 1922 was distributed during the relevant accounting year, December 1, 1954 to November 30, 1955. . . . The company contended that the distribution should be deemed to have been taken place during the accounting year, December 1, 1953 to November 30, 1954, relevant to the assessment year 1955-56.

It was held by the majority of the Judges of the Hon'ble Supreme Court that the expression "distribution" connoted something actual and not notional. It could be physical, it could also be constructive. One might distribute amounts between different shareholders either by crediting the amount due to each one of them in their respective accounts or by actually paying to each one of them the amount due to him. The expression "distribution" had to be given the same meaning which was given to the expression "credited or paid" in Section 16 (2) (old section) of the Act. Dividend must be deemed to have been paid or distributed in the year when it was actually, whether physically or constructively, paid to the separate accounts of the shareholders or paid to them. The distribution of the dividend within the meaning of Section 2 (6A) (d) (old section) took place only during the accounting year, December 1, 1954 to

November 30, 1955, relevant to the assessment year 1956-57. [I. T. R., Vol. 57 (1965), page 1]

With effect from the assessment year 1965-66, Section 8 was amended to mean that any interim dividend shall be deemed to be the income of the previous year in which the amount of such dividend is unconditionally made available by the company to the shareholder who is entitled to it. The effect of the amendment is that the year of taxability of the interim dividend will be determined on the basis of the availability of the amount instead of the method of accounting followed by the assessee.

Dividends paid by a company out of its agricultural income, are not "agricultural income" in the hands of the shareholders and are, therefore, chargeable to Central income-tax even though the company has been assessed to State agricultural income-tax. To grant relief from double taxation in such cases and to place the dividends paid by such companies on the same footing as dividends paid by the company whose entire income is derived from non-agricultural sources, Section 235 provides that the tax payable by a shareholder in respect of his total income (which apparently includes the agricultural portion of the dividend) should be the proportionate amount of agricultural income-tax paid by the company in any State (less any refund obtained by the shareholder from the State) or the Central income-tax payable by the shareholder on the appropriate portion of the dividend, whichever is less. For example, the dividend received by a shareholder from a Tea Company is, say, Rs. 2,000 and the total income of the shareholder is, say, Rs. 15,000 including Rs. 2,000 for the dividend. 40% of the company's income is assessed to Central income-tax and the balance of 60% is assessed to the State agricultural income-tax. The average rate of Central income-tax on Rs. 15,000 is, say, 10%. Thus the portion of the dividend representing agricultural income of the company (and which is not agricultural income in the hands of the shareholder) is Rs. 1,200 on which Central income-tax at the average rate of 10% (appropriate to the shareholder's total income) will be Rs. 120. Now, if the proportionate amount of agricultural income-tax paid by the company (less any refund obtained by the shareholder) is, say, Rs. 80, the shareholder should be allowed a deduction of Rs. 80 from the amount of Central income-tax payable by him. On the other hand, if the agricultural income-tax paid be Rs. 150, then the shareholder should be allowed a deduction of Rs. 120 only. Thus while the law does not allow any double taxation of the portion of the dividend paid out of the company's agricultural income, it does not provide for any refund of Central income-tax to the shareholder at the cost of the Central Government in respect of the agricultural income-tax paid by the company on account of the agricultural portion of the dividend i.e., Rs. 1,200.

§ 3. Annuities—The Income-tax Act does not define what is an annuity. In the ordinary sense, it means the purchase of an income involving conversion of capital into a recurring income. Annuities payable by employers to their employees or dependents or ex-employees are taxable under the head "Salaries". But annuities payable under a deed of separation to a wife or accruing under a family arrangement or by way of bequests under a Will are assessable under this residuary section and even when the payments are made on a monthly basis, no income-tax is deductible at source.

Annuities may be purchased under a contract with a Life Assurance Company. In case of a terminable annuity, the annuitant gets back his capital by instalments along with a certain sum of interest. Such interest would, of course, attract tax in the hands of the recipient, the capital portion being outside the scope of the Act.

But in the case of an annuity payable whole-life, the capital nature of the purchase price vanishes. The sum receivable by the whole-life annuitant would have no relation at all to the premia paid by him earlier. Consequently, such a contract cannot be treated as identical to an investment producing a return of capital originally invested. The entire amount of the whole-life annuity under the circumstances would be liable to tax. To explain, suppose 'B' pays 15 annual premia of, say, Rs. 96 in consideration of annuity of Rs. 100 per annum, payable whole life on attaining the 50th year of his life and ceasing with his death. As his span of life is not known to the company, the annuity may cease at the end of five years or may be continued for 25 years. The entire amount of the annuity in this case would be liable to tax as the capital nature of the repayment cannot be established. In every case, therefore, the taxability of an annuity depends on whether it is a return of capital by instalments or otherwise.

With effect from the Assessment year 1965-66, repayment of annuity deposit in terms of Section 280D is taxable as "earned income" in the year the repayment is effected.

§ 4. Bank interest—Interest on Current Account, Savings Bank Account and Fixed Deposits with a Bank is assessable under this head. If the assessee maintains more than one account then the total amount of interest should be taxed. If any account is overdrawn, the debit interest should be set off against the credit interest and the net amount should be taxed. In the event of an overdraft being created from purchase of shares and securities, the debit interest should be set off against the income from the relative shares and securities.

Interest on deposits in the Post Office Savings Bank, Post Office Cash Certificate and Post Office 10-year National Plan Certificates for amounts not exceeding in each case the maximum amount which is permitted to be deposited or invested therein, are treated as "No income" and should be excluded from the computation of total income. [Section 10 (15)]

§ 5. Royalties or copyright fees (Section 180)—Royalties or copyright fees for literary or artistic works are taxable in full in the year of receipt. To give some relief from higher rate of tax, the law was amended in 1953 by which the assessee was given the option of claiming (1) that in respect of a literary or artistic work which has engaged him for more than 12 months but less than 24 months, the income should be taxed equally in two successive years and (2) that it should be taxed equally in three successive years if the work has engaged him for more than 24 months.

With effect from the Assessment years 1962-63 the procedure was altered in terms of Rule 9 of the Income tax Rules, 1962, reading as follows :

Where a claim for an allocation is made by an assessee under Section 180 for the assessment year 1962-63, or any subsequent assessment year, it shall be dealt with in the following manner, namely—

(i) The tax of the assessment year relevant to the previous year in which the whole amount is received or receivable shall be—

(a) The amount of tax payable on the total income as reduced by two-thirds of the amount referred to in Section 180 included in the total income of the previous year aforesaid had the total income so reduced been his total income ; plus

(b) The tax on an amount equal to two-thirds of the amount referred to in Section 180 included in the total income of the previous year aforesaid at the rate applicable to a total income of an amount equal to one-third of such inclusion ; and

(ii) One-third of the amount referred to in Section 180 included in the total income of the previous year aforesaid shall be included in the total income of each of the two next succeeding previous years and the tax payable if any, in respect of each of the assessments relevant to the two said succeeding previous years shall be reduced by an amount equal to one-half of the tax referred to in sub-clause (b) of clause (i).

§ 6. **Unexplained Cash credits and investments (Sections 68 & 69)**—When any cash is received, the recipient can alone explain the source and nature of such receipt. If he fails to prove positively the source and nature of such receipt, the Revenue Authorities are entitled to draw an inference that the receipt is of an income nature. The burden of proof rests entirely on the recipient to show that the receipt is not of an income nature. Similarly, when an assessee makes an investment (shares, securities, properties, bullion, jewellery etc.) the source and nature of the value of such investment can be explained by the assessee alone. If he fails to prove positively the source and nature or the value of such investment, it will be deemed to be the income of the assessee for the relevant accounting year.

CHAPTER XIII

COMPUTATION OF TOTAL INCOME

§ 1. **Previous year (Section 3)**—So far we have discussed how the income is computed under different heads of income. We shall now discuss the period in relation to which the income is ascertained. The tax is payable in respect of the total income of the “previous year”, the meaning of which is thus of considerable importance. Usually, it means the fiscal year i. e. the 12 months ending on the 31st March next preceding the year for which the assessment is to be made. But if the accounts are made up to a date within the said 12 months in respect of a year ending on any date other than the 31st March, the assessee can adopt that as this ‘previous year.’ To illustrate, income of the year ended 31st March, 1966 is assessable in 1966-67 ; If the books of account have been closed on, say, 31st December 1965, then income for the year ended 31st December, 1965 is assessable in 1966-67. Moreover, an assessee has the option to have separate previous years for each separate source of income i. e., he can choose his previous year for his income from “business” as ending on the 31st December, and for his income from “interest on securities” as ending on the 31st March. But once the option has been exercised, he cannot change it without the consent of the Income-tax Officer and upon such conditions as the latter may think fit. Ordinarily, the Income-tax Officer will not permit the change of the “previous year” unless he is satisfied that it is sought on substantial grounds other than the avoidance of the tax.

The assessee was permitted by the Income-tax Officer to change his previous year from the Fasli year ending with September to the financial year ending with March as from the assessment year 1955-56 on condition that the income for the entire period of eighteen months for October 1, 1953, to March 31, 1955, would be taxed in one assessment. The assessee submitted two returns, one from October 1, 1953, to September 30, 1954, and the other from October 1, 1954, to March 31, 1955. He contended that the chargeable income of property, in view of the provisions of Section 9 (old section) of the Indian Income-tax Act, 1922, would be only for twelve months and not eighteen month, and further, that though eighteen months’ income might be included in the assessment, the tax could be charged only on the basis of the proportionate income of twelve months. The Income-tax Officer rejected these contentions. Appeals to the Appellate Assistant Commissioner and the Appellate Tribunal failed.

It was held by the Hon’ble Andhra Pradesh High Court that there can be only one previous year to a given year of assessment having regard to Section 2 (11) (old section) and 4 (old section) of the Act. Though ordinarily it is full of twelve months, it may sometimes be of longer or shorter duration. When the Income-tax Officer had allowed the change in the previous year as requested on the condition that the income of the whole period shall be brought to tax in one year, the total income determined for the assessment year was chargeable to tax at the rate applicable to such total income and not at the rate applicable to the proportionate income of the period of twelve months.

It was held further, that Section 9 (old section) of the Act enjoins that the bona fide annual value of the property shall be the measure of assessment and

the total income for eighteen months has to be worked out on that basis. Therefore, the income from property was liable to be assessed for eighteen months, that being the size of the previous year, and not on the reasonably expected income of twelve months only. [I. T. R. Vol. 59 (1966), page 57]

In the case of certain communities whose commercial year is not necessarily an English Calendar year but is a period which expressed in Calendar months varies from year to year and in one year may be slightly over and in another slightly under 12 months. In some cases the commercial year may even terminate in the month of April. To minimise the difficulties referred to above, the Commissioners of Income-tax have been authorised to determine as the "previous year" in the case of any person or business,

- (a) a commercial year consisting of not less than 11 months and not more than 13 months.
- (b) a commercial year ending after the fiscal year but not later than the 30th April.

In the case of a business, profession or vocation newly set up in the financial year preceding the year for which the assessment is to be made, the "previous year" is the period from the date of the setting up of the business, profession or vocation to the 31st day of March following or if the accounts of the assessee are made up for a period not exceeding 12 months from the date of the setting up of the business, profession or vocation to some other date than the 31st day of March, then at the option of the assessee the period from the date of the setting of the business, profession or vocation to this other date. If, however, this other date does not fall between the setting up of the business, profession or vocation and the next following 31st day of March, it will be deemed that there was no "previous year".

To illustrate, if a business is set up on the 1st July, 1966 and the accounts are made up to the 30th June 1967, the assessee can choose to have the year ended 30th June, as his "previous year" and in such circumstances there will be deemed to have been no "previous year" for assessment for the year 1967-68 the profits for the year ended 30th June, 1967 being taken as profits of the "previous year" for assessment for the year 1968-69. If however, the assessee elects the Calendar year to be taken as the "previous year" the profit for the period 1st July, 1966 to 31st December, 1966 will be taken as the profits of the "previous year" for assessment for 1967-68. If the assessee makes no choice, the "previous year" for 1967-68 will be 1st July, 1966 to 31st March, 1967.

When the assessee is a partner of a firm the "previous year" in respect of his share in the firm shall be the "previous year" of the firm itself. But in respect of his other sources of income he can have a separate "previous year".

In the following cases, however, the tax is payable on the income of the "assessment year" instead on the income of the "previous year"—(a) Profits of non residents from occasional shipping business (Section 172) ; (b) when an individual is likely to leave India permanently (Section 174) ; (c) when persons try to alienate their assets for avoiding payment of tax (Section 175) ; and (d) when a business, profession or vocation is discontinued (Section 176) (Vide Chapter XIX § 4)

Illustration 29.

Corresponding Accounting Period Ended On						
Assessment Year	Fiscal Year	Calendar Year	Ram-navami	Bengali Year	Dewali Year	Dewali Gujrati
1952-53	31-3-52	31-12-51	3-4-52	13-4-52	30-10-51	31-10-51
1953-54	31-3-53	31-12-52	24-3-53	13-4-53	18-10-52	19-10-52
1954-55	31-3-54	31-12-53	11-4-54	13-4-54	6-11-53	7-11-53
1955-56	31-3-55	31-12-54	1-4-55	14-4-55	26-10-54	27-10-54
1956-57	31-3-56	31-12-55	19-4-56	13-4-56	14-11-55	15-11-55
1957-58	31-3-57	31-12-56	8-4-57	13-4-57	2-11-56	3-11-56
1958-59	31-3-58	31-12-57	29-3-58	13-4-58	22-10-57	23-10-57
1959-60	31-3-59	31-12-58	17-4-59	14-4-59	10-11-58	11-11-58
1960-61	31-3-60	31-12-59	5-4-60	13-4-60	31-10-59	1-11-59
1961-62	31-3-61	31-12-60	25-3-61	13-4-61	20-10-60	21-10-60
1962-63	31-3-62	31-12-61	13-4-62	13-4-62	8-11-61	9-11-61
1963-64	31-3-63	31-12-62	2-4-63	14-4-63	28-10-62	29-10-62
1964-65	31-3-64	31-12-63	20-4-64	13-4-64	15-11-63	16-11-63
1965-66	31-3-65	31-12-64	10-4-65	13-4-65	3-11-64	4-11-64
1966-67	31-3-66	31-12-65	31-3-66	14-4-66	23-10-65	24-10-65
1967-68	31-3-67	31-12-66	19-4-67	14-4-67	12-11-66	13-11-66
1968-69	31-3-68	31-12-67	7-4-68	13-4-68	1-11-67	2-11-67
1969-70	31-3-69	31-12-68	27-3-69	13-4-69	21-10-68	22-10-68
1970-71	31-3-70	31-12-69	15-4-70	14-4-70	9-11-69	10-11-69

Corresponding Accounting Period Ended On						
Assessment Year	Akshoy Tritia	Rathajatra Year	Mahajani Year	Bijoya Dashami	Hijri Year	Basant Panchami
1952-53	27-4-52	6-7-51	9-10-51	10-10-51	2-10-51	31-1-52
1953-54	16-5-53	24-6-52	27-9-52	28-9-52	21-9-52	20-1-53
1954-55	5-5-54	13-7-53	17-10-53	18-10-53	10-9-53	8-2-54
1955-56	25-4-55	2-7-54	6-10-54	7-10-54	30-8-54	28-1-55
1956-57	13-5-56	21-6-55	25-10-55	26-10-55	19-8-55	16-2-56
1957-58	2-5-57	9-7-56	13-10-56	14-10-56	8-8-56	5-2-57
1958-59	22-4-58	29-6-57	2-10-57	3-10-57	28-7-57	24-1-58
1959-60	10-5-59	19-6-58	21-10-58	22-10-58	18-7-58	12-2-59
1960-61	28-4-60	8-7-59	10-10-59	11-10-59	7-7-59	1-2-60
1961-62	18-4-61	26-6-60	29-9-60	30-9-60	25-6-60	21-1-61
1962-63	7-5-62	14-7-61	18-10-61	19-10-61	14-6-61	9-2-62
1963-64	26-4-63	3-7-62	7-10-62	8-10-62	3-6-62	30-1-63
1964-65	14-5-64	23-6-63	26-10-63	27-10-63	24-5-63	18-2-64
1965-66	4-5-65	11-7-64	15-10-64	16-10-64	13-5-64	6-2-65
1966-67	23-4-66	30-6-65	4-10-65	5-10-65	2-5-65	26-1-66
1967-68	12-5-67	20-6-66	22-10-66	23-10-66	22-4-66	14-2-67
—	—	—	—	—	11-4-67	—
1968-69	30-4-68	9-7-67	12-10-67	13-10-67	31-3-68	3-2-68
1969-70	19-4-69	27-6-68	30-9-68	1-10-68	20-3-69	22-1-69
1970-71	8-5-70	16-7-69	19-10-69	20-10-69	9-3-70	10-2-70

§ 2. **Method of Accounting (Section 145)**—Profits and gains of business, profession or vocation and “income from other sources” shall be computed in accordance with the method of accounting regularly followed by the assessee. No uniform method of accounting is prescribed for all tax-payers alike. Every

assessee may, so far as possible, adopt such form and system of accounting as is best suited for his own purpose. Broadly speaking, there are two main systems of keeping accounts. Firstly, the cash basis system, where a record is kept of actual receipts and actual payments, entries being made only when money is actually collected or disbursed. It is probably unusual for a trader to ascertain his profits on this system. If however, he does so, the difference in the value of his opening and closing stocks must be taken into account when computing the year's profits. Secondly, the mercantile accounting system under which a profit and loss account is maintained and a comparison is made of the value of opening and closing stocks. Under the latter system entries are recorded in the accounts on the date not of receipt or disbursement of money but on the date of pecuniary transactions irrespective of the date of payment.

Under the cash system, it is only actual cash payment that are recorded as credits and debits : whereas under the mercantile system, credit entries are made in respect of amounts due immediately they become legally due and before they are actually received ; similarly, the expenditure items for which legal liability has been incurred are immediately debited even before the amounts in question are actually disbursed. Where accounts are kept on mercantile basis, the profits or gains are credited though they are not actually realised and the entries thus made really show nothing more than an accrual or arising of the said profits at the material time. The same is the position with regard to debits made. [I.T.R. Vol. 35 (1959), page 298] [Supreme Court decision.]

In April, 1946, the assessee company entered into a contract with another company to supply jute on future dates at specified rates. Under the contract the buyer had the option, in the event of non-delivery of the goods on the due dates, to cancel the contract and to recover the difference between the price fixed in the contract and the market price on the date of cancellation. The assessee was not able to supply the goods on the due date viz., the 28th February, 1947. The buyer cancelled the contract on March 1, 1947 and claimed a sum of Rs. 3,68,997 as the difference in price. The matter was referred to the Bengal Chamber of Commerce which passed an award in 1948 and the award was filed in the High Court in 1949. A settlement was subsequently arrived at by which the sum payable was fixed at Rs. 1,35,000 and it was made payable in February, 1950. The assessee paid this amount in February, 1950, and claimed the amount thus paid as a loss in the year 1950-51. The Income-tax Authorities contended that this was a loss pertaining to the year 1946 and that the assessee should have claimed the loss of Rs. 3,68,997 in the assessment year 1947-48 and should have applied for adjustment in the assessment year 1950-51, as he maintained his accounts on the mercantile system.

It was held by the Hon'ble Calcutta High Court that even though the assessee maintained his accounts on the mercantile system he was not bound to show all anticipated loss as and when the claims were made and pay tax on that basis and have the matter re-adjusted later when the anticipated loss was quantified. The loss could be claimed only when it was ascertained and the assessee was, therefore, entitled to have the loss allowed in the assessment year 1950-51 as claimed by him.

The mercantile system of book-keeping does not cast on an assessee any obligation to take note of all claims that may be raised against him whether good or bad. [I.T.R., Vol. 46 (1962), page 688].

The assessee took over a running business on February 1, 1950, at a time when a dispute between the predecessor and its workmen regarding their claim for deepavali bonus for 1949 was pending adjudication by the Industrial Tribunal. After the transfer of the business, the assessee was also made a party to the industrial dispute. The Tribunal's award directing payment of one and a half months' basic wages as bonus was published on February 9, 1951. The assessee also agreed on June 30, 1951, to pay Deepavali bonus for 1950. The total amount of bonus for 1949 and 1950 amounting to Rs. 54,140 was debited in the assessee's accounts (maintained on the mercantile system) in the accounting year ending January 31, 1952. The question was whether the sum of Rs. 54,140 so debited was an allowable expenditure under Section 10(2)(xv) (old section) of the Income-tax Act in the relevant assessment year 1952-53.

It was held by the Hon'ble Madras High Court (i) that the liability to pay bonus under the award and the agreement was a liability, enforceable against the assessee. The liability itself accrued only after the date of transfer of the business. When the assessee provided for the bonus payment in the year ending January 31, 1952, it discharged its own liability accruing in that year of account. (ii) That the payment of bonus was an expenditure incurred to continue the business and to secure industrial peace and harmony in which the business could be continued. It was not capital expenditure. (iii) That the sum of Rs. 54,140 was expenditure laid out wholly and exclusively for the purpose of assessee's business and was an allowable expenditure under Section 10(2)(xv) (old section).

It was held also, that the expenditure was properly deductible in the accounting year ending on January 31, 1952. It was only in that year that the liability accrued ; in the earlier years was at best a contingent liability.

A claim by workmen for bonus, to whatever period it relates, is at best a contingent liability of the employer at the stage when the claim is preferred. It becomes an accrued liability if the claim is admitted by the employer. If the claim is denied and the workmen do not pursue the claim, it will never accrue as a liability. If the claim is denied by the employer and it is referred as an industrial dispute, no liability accrues, if the Industrial Tribunal negatives it. If however, the claim is upheld by the Industrial Tribunal after adjudication, it becomes an accrued liability when the award become enforceable. If the claim for bonus is settled by agreement between the employer and the workmen, it becomes an accrued liability on the date of the agreement. [I.T.R. Vol. 43 (1961), page 281].

During the financial year 1st April, 1948 to 31st March 1949, the assessee supplied bread to a Government Hospital. The accounts were maintained under mercantile basis and the amount due from the Government was credited in the accounts for the year 1948-49 and the assessment was completed on the basis of such accounts. Some time after the 31st March, 1949 representations were made to the Government for relieving the assessee from the loss sustained in the supply of bread to the Hospital. The Government by its order dated 24th November, 1950, directed payment of Rs. 12,447 towards compensation for the loss sustained by the assessee. It was held by the Hon'ble Supreme Court under the circumstances that the amount should be included in the profits for the year 1950-51 relevant to the assessment year 1951-52 and that it could not be related back to the earlier year 1948-49 during which the assessee actually supplied bread to the Hospital. As the right to receive the payment of the additional sum arose on the day the payment was sanctioned

by the Government i.e., 24th November, 1950, the income did not accrue or arise to the assessee in the accounting year 1948-49 although the accounts were maintained under mercantile system and the supplied bread were effected during 1948-49. [I.T.R. Vol. 53(1964), page 115].


The method of accounting regularly followed by an assessee for the purposes of computing income from business, profession or vocation or other sources should be followed for determining his profits for income-tax purpose. It is a practice among certain merchants to prepare their accounts on the basis of the mercantile accounting system in respect of transactions between themselves and members of their own community, but on the basis of cash payments in the case of transactions between themselves and other customers. Provided the system is continuously employed and if taking one year with another the full income is shown on a consistent basis, it should be followed for income-tax purposes. Again there are cases where various branches of a business are only closed once in three or five years and where the account of the branches are not annually incorporated in the headquarter's business account. In such a case, it might be possible to assess either on the average annual profits of the branches as disclosed by the accounts last filed or on the actual profits brought to accounts owing to particular branches closing in a particular year.

Where no method of accounting has regularly been followed or where the method followed is such that in the opinion of the Income-tax Officer income, profits or gains cannot properly be deduced therefrom, then the computation shall be made on such basis as the Income-tax Officer may think fit. The computation should, of course, be based on reasonable materials though the estimate may only be a rough one.

The assessee, who was a rural moneylender, used to advance money to agriculturists on interest. As they could repay only according to the harvests the assessee followed the following system of accounting. Advances were given to various parties and the account of each was debited with the amount of the advance. When moneys were received from them they were credited to their accounts. No apportionment between capital and interest was made if there was continuity of dealings with the debtor. But when the debtor come for settlement, then adjustments were made towards interest. It was possible from the accounts, which were regularly kept for several years, to deduce the capital lent out each year, the interest realisations of that year, and the average rate of interest on the capital lent. The Income-tax Officer held that this was not a system from which the profits of each year could be properly deduced and assessed tax on interest at the average of 11 per cent, applying Section 13 (old section) of the Income-tax Act, 1922. The Assistant Commissioner held that the income could be properly deduced from the accounts and that there was no justification for applying Section 13 (old section), and the Tribunal agreed with the Assistant Commissioner. It was held by the Hon'ble Mysore High Court on the facts and circumstances of the case, having regard to the method of accounting adopted by the appellant, the application of the proviso to Section 13 (old section) of the Income-tax Act was not proper. [I. T. R., Vol. 54 (1964), page 221].

§ 3. **Total income**—Under the Indian Income-tax Act, tax is levied in respect of total income of the previous year. The 'total income' determines the rate or rates of tax applicable to successive slices of income though certain parts thereof may be exempt on one ground or another i.e., interest on tax-free securities, etc. Before an item can be included in 'total income' it must

be in the nature of income, profits or gains. Consequently, total income does not include any item which is specially exempt from tax. But it should include in addition to income on which tax is payable by the assessee directly, items taxed at source on his behalf as also items of income which really belong to him through nominally to others (i.e. income of wife, minor children, etc.). We have discussed earlier in detail the different classes of income which are not liable to tax or are only partially liable. Total income being so determined the assessee's liability to tax and the rate at which he should pay are fixed by the annual Finance Act.



CHAPTER XIV

SET OFF AND CARRY FORWARD OF LOSS

(Sections 70 to 80)

§ 1. **General**—We have already discussed how net income under different heads are computed. Where the net result in respect of any source falling under any head of income is a 'negative figure', it shall be set off against "positive figure" under any other source of income under the same head. To explain, if an assessee carries three different businesses, say, cloth business, oil business and paper business in three different places and suffers loss in paper business and makes profit in the remaining businesses, then this loss in paper business shall be set off against the profit in cloth business and oil business. In addition in computing the total income of an assessee loss under any head of income other than "Capital Gains" shall be set off against income from any other head. To Explain, if there be any "minus income" say under "property", it shall be set off against the "plus income", say, under "interest on securities". If the resultant figure is still "minus", the assessment shall be at NIL. But if the resultant "minus income" arises from "business, profession or vocation" then it shall be carried forward to the succeeding year. With the consent of the assessee, "minus income" under any head can be set off against "plus income" under "Capital Gains".

§ 2. **Loss in Business, Profession or Vocation**—Loss incurred in a business, profession or vocation (other than speculation business) shall, if it cannot be set off against income from other heads of income of the same year, be carried forward and set off against the profits and gains of the same business, profession or vocation of the succeeding year. It can also be set off against any other business, profession or vocation (other than speculation business) provided the original business, profession or vocation is carried on by the assessee in the year of set off. It should be noted, however, that the loss which has been brought forward from the preceding year cannot be set off against any other head of income of the following year. In addition, if the original business, profession or vocation in which the loss occurred is discontinued, the right to set off the loss which has been brought forward from a preceding year will automatically be forfeited. The total period of carrying forward the loss is restricted to eight years only.

The respondent-company (Prithvi Insurance Co. Ltd.) carried on the business of life insurance as well as general insurance. Both life insurance and general insurance business were attended to by its branch managers and agents without any distinction, there was one common administrative organisation and the expenses incurred both administration and for heads of expenditure such as salary of the staff, postage, staff welfare fund and general charges, were common. The question was whether the unabsorbed losses of the respondent-company for the assessment year 1950-51 and earlier years in respect of life insurance business could be set off against its profits of the general insurance business for the assessment years 1951-52 to 1954-55 under Section 24(2) (old section) of the Indian Income-tax Act, 1922 ;

It was held by the Hon'ble Supreme Court that the respondent-company was entitled to the set-off claimed by it as the life insurance business and the general insurance business constituted one composite business. The inter-connection, inter-lacing, inter dependence and unity were furnished by the existence of common management and common place of business.

Because in respect of the life insurance business and the general insurance business there are special methods of computation of income for the purpose of levying income-tax, it does not follow that they are not the "same business" within the meaning of Section 24(2) (old section). The question whether life insurance business and general insurance business carried on by the assessee may be regarded as the "same business" or different business depends not upon the special method prescribed by the Income-tax Act, for computation of the taxable income, but upon the nature of the business, the nature of their organisation, management, source of the capital fund utilised, method of book-keeping used and other related circumstances which stamp the businesses as the same or distinct.

If one business cannot conveniently be carried on after the closure of the other, there would be a strong indication that the two constituted the "same business," but no decisive inference may be drawn from the fact that after the closure of one business, another may conveniently be carried on. [I.T.R. Vol. 63 (1967) page 632].

The advantage or the right conferred by sub-section (2) of Section 24 (old section) of the Income-tax Act, 1922, to carry forward unabsorbed loss of a business is available only when the business is continued without break from year to year and not otherwise. Cessation of the business in which the loss was originally sustained would necessarily result in the loss of the right to carry forward its loss to the "following year and so on." Though it is true that one of the shades of the meaning of the word "continue" is "to resume", and one of the shades of the meaning of the word "resume" is "to take up a thing after an interruption" having regard to the different shades of meaning of both the words, the main idea conveyed is continuation of a thing without break. Even assuming that the word "resume" means "taking up a thing after having given it up" having regard to the scheme underlying the relevant provisions of Section 24 (old section) the words "provided that the business, profession or vocation in which the loss was originally sustained continued to be carried on by him in that year" are not capable of bearing a construction so as to include restarting a business, in which loss was suffered after its discontinuance. [I. T. R., Vol. 58 (1965), page 1] [Bombay High Court decision.]

The respondent [A. Dharma Reddy (deceased)] was an individual whose only sources of income were his shares in several firms. Apart from the firms which carried on other business there were two firms, A and B, which carried on business in bidi leaves. Firm A consisted of two partners and firm B of four. Firm A was dissolved on March, 31, 1955, but firm B continued during the accounting year relevant to the assessment year 1956-57. The respondent sustained a loss in firm A for the assessment year 1955-56 which after adjustment against his other income for that year came to Rs. 24,532. This amount he claimed to set off under Section 24(2) (ii) (old section) of the Income-tax Act, 1922, as amended in 1955, against his share of the income of firm B for the assessment year 1956-57 :

It was held by the Hon'ble Supreme Court that the respondent carried on the business in bidi leaves apart from other businesses. This business

he was doing in partnership. Nevertheless the business was of taking contracts in respect of or dealing in bidi leaves and this business he could do either individually or in partnership with someone else. The fact that firm A was dissolved on March 31, 1955, did not mean that his business in bidi leaves came to an end so long as he continued to do that business either individually or in partnership with others. The business of the respondent which consisted of dealings or taking of contracts in bidi leaves, did not depend on the constitution of a partnership through which it was carried on nor could it come to an end so long as the respondent carried on the same systematic course of activity. The business in which the loss had been sustained by the respondent when he was a partner of firm A which was dissolved on March 31, 1955, continued to be carried on by him in partnership with three other persons during the assessment year 1956-57. He did not stop doing that business in the assessment year 1956-57. The respondent was, therefore, entitled under Section 24 (2) (old section) to set off his share of the unabsorbed loss of Rs. 24,532 from Firm A brought forward from the assessment year 1955-56 against his business income for 1956-57. [I. T. R. Vol. 73 (1969) page 751.]

§ 3. **Loss in Speculation Business**—According to Section 43(5) "Speculative transaction" means a transaction in which a contract for the purchase or sale of any commodity, including shares, is periodically settled without actual delivery or transfer of the commodity or scrips. Profits arising out of "Speculative transactions" is liable to tax just like any other business profit. But loss arising out of "Speculative transactions" can be set off only against profit arising out of any other "Speculative transaction" in the same assessment year. If the loss cannot be set off, it shall be carried forward and set off against any profit arising out of any "Speculative transactions" of the succeeding year. The total period of carrying forward this loss is also restricted to eight years only.

Departmental instructions as per Circular No. 4 (124) SO TPL C.B.R. dated the 12th Sept., 1960 are as follows :

(i) either to set off the speculation losses carried forward from an earlier year against the speculation profits of the current year and then to set off the current year's losses from any other source against the remaining part, if any, of the current year's speculation profit, or

(ii) to first set off the current year's losses from non-speculation business and any other source against the current year's speculation profits and then to set off the carried forward speculation losses of the earlier year against the remaining part, if any, of the current year's speculation profits,

whichever is advantageous to the assessee.

The respondent (Pangal Vittal Nayak and Co. P. Ltd.) was a member of an association for speculation in cocoanut oil. It speculated on its own. It also received orders from its constituents, who were not members of the association, to speculate on their behalf, the procedure for these transactions being as follows : The respondent received an instruction by telephone or telegram to buy or sell a certain quantity. Immediately it entered it into its books and informed the party of the sale or purchase having been effected. But as only members could deal with the association, actually no such purchase or sale was made through the association in the name of that party, though there were other purchases or sales in forward transactions by the respondent itself. The dates for settlement as also the rates at which the transactions were entered into were settled. On the relevant date settlement

was made, profit being either paid to or received from the party having regard to the rates obtaining on that day. On each such transaction the respondent also received a commission from the party on whose behalf the transaction was done. The respondent claimed to set off such commission against its speculation losses.

It was held by the Hon'ble Supreme Court that the commission received by the respondent could not be set off against the speculation losses, because there was no element of speculation whatever in the commission income received by the respondent; the commission was independent of any fluctuation in the market and no risk was involved in earning it. The commission had to be treated not as a profit from the speculation business but as profit from the business as a broker, and the respondent was not entitled to have the commission receipts assessed under the head "speculation business". [I. T. R. Vol. 74 (1969) page 754].

§ 4. Loss arising from sale of "Short-term Capital Asset"—Loss arising from sale of "Short-term Capital Asset" shall be set off against profit arising from sale of any other "Short-term Capital Asset" as also any other heads of income in the same assessment year. If the loss cannot be wholly set off in one year, it shall be carried forward to the succeeding year and set off against the profit arising from sale of "Short-term Capital Asset" of that year only. The total period of carrying forward this loss is restricted to eight years only.

§ 5. Loss arising from sale of "Long-term Capital Asset"—Loss arising from sale of "Long-term Capital Asset" shall be set off against profit arising from sale of any other "Long-term Capital Asset" in the same assessment year. If the amount of loss is less than Rs. 5,000, then it shall be ignored in the case of an assessee other than a company. If this loss of more than Rs. 5,000 cannot be wholly set off in one year, it shall be carried forward to the succeeding year and set off against the profit arising from sale of "Long-term Capital Asset" of that year. The total period of carrying forward this loss is restricted to four years only.

§ 6. Loss of Registered Firms—In computing the total income of a registered firm, loss under one head can be set off against profit from any other head. In the event of a loss (or unabsorbed depreciation) still remaining, it shall be apportioned among the partners who were entitled to share the profit and loss of the firm in the accounting year, and should, under no circumstances, be carried forward to be set off against the income of the firm itself in the succeeding year. Where a previous partner has given up his share owing to a change in the constitution or is dead, only his successor by inheritance is entitled to carry forward the loss allocated to him by the firm. No other person, including his successor in the firm, can claim to set off this loss against his income.

In the case of a registered firm if full effect cannot be given to any depreciation allowance in any past year then the carried forward unabsorbed depreciation becomes depreciation of the current year in the hands of the partners. If one of such partners is carrying on no other business such partner can necessarily set off the unabsorbed depreciation against income under other heads. In the language of Section 10(2)(vi), proviso (b) (old section), is implicit the intention of the legislature that effect can be given to a depreciation allowance in the assessment of a partner. In such a case set off is permitted under Section 24(1) (old section) and recourse to Section 24(2) (old section) is unnecessary. In that view, even the condition prescribed in clause (ii) of sub section (2) of Section 24, (old section) that the business

profession or vocation in which the loss was originally sustained should continue to be carried on, may also not be necessary because carry forward of depreciation is not covered by Section 24(2) (old section) [I. T. R. Vol. 75(1970), page 1] [Delhi High Court decision].

§ 7. Loss of Unregistered Firms—In computing the total income of an unregistered firm, loss under one head can be set off against profit from any other head. In the event of a loss still remaining, it shall be carried forward to the succeeding year and set off against the business income of the firm itself in the succeeding year. In no case it shall be apportioned among the partners even when the unregistered firm has not been assessed. All that is allowed is the collective set off available to the firm as a whole.

According to the decision of the Supreme Court of India in *Jamunadas Daga Vs. C. I. T. Bombay* [I. T. R., Vol. 41 (1961), page 639] the partners of an unregistered firm can set off their share of loss against income from other sources for the same year for the purpose of determining their "total income" on the basis of which the average rate of tax will be applicable. But they will not have any right to carry forward their share of loss to the succeeding year to set off against their share of profits arising from the firm in the succeeding year.

§ 8. Loss of Controlled Companies—Loss incurred by a company in which the public are not substantially interested [as defined in Section 2 (18)] and carried forward from a preceding year cannot be set off in a subsequent year unless 51% of the voting power were continued to be held by the same persons. To explain, loss incurred by a company during the year ended 31st March, 1968 will not be allowed to be set off against the profit arising during the year ended 31st March, 1969 unless 51% of the voting power were beneficially held by the same person on the 31st March, 1968 and the 31st March, 1969. This set off will, however, be allowed if it is proved to the satisfaction of the Income-tax Officer that the change in the share-holding was not effected with a view to avoid or reduce any tax liability.

§ 9. Unabsorbed Depreciation—Where the profits or gains of a business are insufficient to cover the entire amount of depreciation admissible on the buildings, machinery, plant etc. used for the purpose of the business, the excess depreciation can be set off against the income accrued to the assessee from any other head of income. Where, however, full effect cannot be given the allowance shall be added to the amount of depreciation allowance for the succeeding year and so on. In carrying forward depreciation, business loss should be set off before depreciation, since business loss can be carried forward for eight years whereas unabsorbed depreciation can be carried forward till it can be fully absorbed.

On a consideration of the provision of Section 10 (1), Section 10 (2) (vi) proviso (b) and Section 24 (1) and (2) (old sections), it appears that the depreciation allowance permitted under Section 10 (2) (vi) is available in the first place in the computation of the income from the business in which the depreciation is given and is adjusted against the profits and gains of that business. If the depreciation allowance is larger than the profits or gains in that business so that an excess remains after the said profits and gains are absorbed, such excess comes under Section 10 (1) for absorption of the profits and gains of other business, if any, carried on by the assessee. If a balance from the depreciation allowance is left even thereafter, that becomes available for set off against the income, profits and gains from any other head during that year. In case there is still a balance left over, it is taken to

the following year, and if there is current depreciation for the following year it is added on to that current depreciation and deemed a part of it, and if there is no current depreciation for the following year, the balance carried forward becomes the depreciation allowance for the following year available for the adjustment in the same manner as the current depreciation for the following year except that where there are also "carried forward losses", of the earlier years the said carried forward losses will be first absorbed against the profits and gains of the business before the carried forward part of the depreciation allowance is allowed to be adjusted. Except for this distinction between the carried forward part of the depreciation allowance and the current depreciation, there is no other distinction between them.

Unabsorbed depreciation does not lose its character when it is carried forward to the following year. In addition, unabsorbed depreciation carried forward cannot be treated on the same basis that it is "business loss carried forward". Accordingly, it was held by the Hon'ble Bombay High Court that the assessee who has income from business as well as income from house property in the current year was entitled to have not merely the business income but also the property income adjusted against the "unabsorbed depreciation carried forward" from an earlier year. [I. T. R., Vol. 49 (1963), page 145]

The aggregate depreciation allowance allowed year to year must not however exceed 100% of the actual cost to the assessee.

Unabsorbed capital expenditure on Scientific Research and Family Planning will be treated exactly on the same basis as unabsorbed depreciation.

§ 10. Unabsorbed Development Rebate—Where the profits and gains of a business are insufficient to cover the entire amount of development rebate, the excess amount can be set off against any other income accrued to the assessee during the same accounting year. If the amount cannot be wholly set off, the excess can be carried forward to the subsequent year. Loss in "business, profession or vocation" carried forward from an earlier year can be set off only against profit arising from "business, profession or vocation" in a subsequent year. Loss in "speculation business" carried forward from an earlier year can be set off only against profit from "speculation business" arising in a subsequent year. Loss arising from sale of "Long-term Capital Asset" and carried forward from an earlier can be set off only against profit arising from sale of "Long-term Capital Asset" in a subsequent year. But unabsorbed development rebate carried forward from an earlier year can be set off against any other head of income arising in a subsequent year. The total period of carrying forward unabsorbed development rebate is, however, restricted to eight years only.

Illustration 30.

From the following particulars, compute A's total income for the different assessment years.

(1) Accounting year ended 31st March, 1965—

Income from House property Rs. 10,000. Loss from cloth business Rs. 15,000. Interest on Fixed Deposit Rs. 3,000.

(2) Accounting year ended 31st March, 1966—

Income from House property Rs. 10,000. Profit from cloth business Rs. 5,000.

- (3) Accounting year ended 31st March, 1967—
Income from House property Rs. 12,000. Loss from cloth business Rs. 26,000
- (4) Accounting year ended 31st March, 1968—
Income from House property Rs. 12,000. Loss from cloth business Rs. 10,000
- (5) Accounting year ended 31st March 1969—
Income from House property Rs. 12,000. Profit from cloth business Rs. 10,000
- (6) Accounting year ended 31st March, 1970—
Income from House property Rs. 12,000. Profit from cloth business Rs. 20,000.

ANSWER

Statement of total income for the year ended 31st March, 1965
(Assessment year 1965-66)

Income from House property	Rs. 10,000
Interest on Fixed Deposit	3,000
	Rs. 13,000
Loss from cloth business	15,000
Loss carried forward to the assessment year 1966-67	Rs. <u>2,000</u>

Statement of total income for the year ended 31st March, 1966
(Assessment year 1966-67)

Income from House property		Rs. 10,000
Profit from cloth business	Rs. 5,000	
Less : Loss carried from the assessment year 1965-66	2,000	3,000
Total Income		Rs. <u>13,000</u>

Statement of total income for the year ended 31st March, 1967.
(Assessment year 1967-68)

Income from House property	Rs. 12,000
Loss from cloth business	26,000
Loss carried forward to the assessment year 1968-69	Rs. <u>14,000</u>

Statement of total income for the year ended 31st March, 1968
(Assessment year 1968-69)

Income from House property	Rs. 12,000
Loss from cloth business	10,000
Total Income	Rs. <u>2,000</u>

Rs. 14,000 being loss carried forward from the assessment year 1967-68 will be carried over to the assessment year 1969-70.

**Statement of total income for the year ended 31st March, 1969.
(Assessment year 1969-70)**

Income from House property		Rs. 12,000
Profit from cloth business	Rs. 10,000	
Less : Loss carried forward from the assessment year 1967-68	10 000	NIL
Total Income		<u>Rs. 12,000</u>

Rs. 4,000 being loss carried forward from the assessment year 1967-68 will be carried over to the assessment year 1970-71.

**Statement of total income for the year ended 31st March, 1970.
(Assessment year 1970-71)**

Income from House property		Rs. 12,000
Profit from cloth business	Rs. 20,000	
Less : Loss carried forward from the assessment year 1967-68	4,000	16,000
Total Income		<u>Rs. 28,000</u>

Illustration 31.

From the following particulars, compute the total income of Sri Pravat Kamal Pal for the assessment years 1968-69, 1969-70 and 1970-71.

Accounting period 1.4.67 to 31.3.68

1. Interest on securities (Gross)	Rs. 6,000
2. Income from House properties	16,000
3. Profit from speculation business	4,000
4. Loss in cloth business	24,000
5. Dividends (Gross)	8,000
6. Loss arising from sale of "Long-term Capital Asset" Comprising of lands	4,000

Accounting period 1.4.68 to 31.3.69

1. Interest on securities (Gross)	Rs. 6,000
2. Income from House properties	16,000
3. Loss in speculation business	18,000
4. Profit in cloth business	12,000
5. Dividends (Gross)	9,000
6. Loss arising from sale of "Short-term Capital Asset"	14,000
7. Profit arising from sale of "Long-term Capital Asset" Comprising of Buildings.	6,000

Accounting period 1.4.69 to 31.3.70.

1. Interest on securities (Gross)	Rs. 3,000
2. Income from House properties	18,000
3. Profit in speculation business	24,000
4. Loss in cloth business	8,000
5. Dividends (Gross)	4,000
6. Profit arising from sale of "Short-term Capital Asset"	12,000
7. Profit arising from sale of "Long-term Capital Asset" Comprising of Securities.	15,000

ANSWER**Computation of total income of Sri Pravat Kamal Pal.****Assessment year 1968-69**

1. Interest on securities (Gross)	Rs.	6,000
2. Income from House properties		16,000
3. Profit from speculation business		4,000
4. Dividends (Gross)		8,000
	Rs.	34,000
Less : Loss in cloth business		24,000
Total Income	Rs.	10,000

Loss arising from sale of "Long-term Capital Asset" comprising of lands shall be ignored as it is less than Rs. 5,000.

Assessment year 1969-70

Interest on Securities (Gross)	Rs.	6,000
Income from House properties		16,000
Profit in cloth business		12,000
Dividends (Gross)	Rs. 9,000	
Less : Exempt (Section 80L)	500	8,500
		Rs. 42,500
Less : Loss arising from sale of "Short-term Capital Asset"		14,000
		Rs. 28,500
And : Profit arising from sale of "Long-term Capital Asset" Comprising of Buildings	Rs. 6,000	
Less : 100% of Rs. 5,000	5,000	
	Rs. 1,000	
Less : 45% of Rs. 1,000 (Section 80T)	450	550
Total Income	Rs.	29,050

Loss in speculation business amounting to Rs. 18,000 shall be carried forward to the assessment year 1970-71.

Assessment year 1970-71

Interest on securities (Gross)	Rs.	3,000
Income from House properties		18,000
Profit in speculation business	Rs. 24,000	
Less : Loss brought forward from assessment year 1969-70	18,000	6,000
Carried Over	Rs.	27,000

Brought Forward		Rs. 27,000
Dividends (Gross)	Rs. 4,000	
Less : Exempt (Section 80L)	1,000	3,000
		<hr/>
Less : Loss in cloth business		Rs. 30,000
		8,000
		<hr/>
Profit arising from sale of "Short-term Capital Asset"		Rs. 22,000
		12,000
Profit arising from sale of "Long-term Capital Asset", Comprising of Securities	Rs. 15,000	
Less : 100% of Rs. 5,000	5,000	
		<hr/>
Less 65% of Rs. 10,000 (Section 80T)	Rs. 10,000	
	6,500	3,500
		<hr/>
Total Income		Rs. 37,500
		<hr/>

Revisional Problems.

Question Nos. 49, 55, 57 and 59.

CHAPTER XV

DEDUCTION FROM TOTAL INCOME

§ 1. Life Insurance Premia, Contribution to Recognised Provident Funds etc. (Section 80 C)—The following amounts are eligible for deduction—

(a) Employee's contribution to an approved Super-annuation Fund, to a Provident Fund to which the Provident Funds Act, 1925 applies, to a Provident Fund recognised under the Income-tax Act, 1961 and the Employee's Provident Fund Act, 1952, upto one-fifth of the employee's annual salary (including dearness pay) with a maximum of Rs. 8,000.

(b) Any sum paid by an assessee to effect an insurance on his life or on the life of his wife or children or in respect of a contract for a deferred annuity on his life or on his wife's life and contributions to Widows, Orphans and Old Age Contributory Pensions Fund, 1925.

(c) Any sum deposited by an individual in a ten-year or fifteen-year account under the Post Office Saving Bank (Cumulative Time Deposits) Rules 1959 as amended from time to time.

The total amount eligible for deduction under (a), (b) and (c) shall not exceed 30% of the gross total income (before any deduction under Chapter VIA) subject to a maximum of Rs. 15,000 for an individual and Rs. 30,000 for a Hindu undivided family. The allowance regarding life insurance premium is further restricted to 10% of the capital sum assured excluding bonus etc. i.e., if the policy is for Rs. 1,000 the maximum premium exempted should be Rs. 100 only. The deduction has been restricted to 60% of the first Rs. 5,000 of the insurance premia, Provident Fund contributions etc. and 50% of the remaining amount eligible for deduction. The effect of this deduction has been explained fully in the illustrations.

§ 2. Medical Treatment of dependent relatives (Section 80D)—With effect from the assessment year 1965-66, fees and charges for medical treatment (including nursing) of dependent relatives has been excluded from the computation of the gross total income of an individual and a Hindu undivided family resident in India. The deduction is limited to Rs. 2,100 if the handicapped dependent relative has been admitted in a hospital, or a nursing home or any approved medical institution for 182 days or more. In any other case the deduction will be limited to Rs. 600. Relative in relation to an individual means the mother, father, husband or wife of the individual; a son, daughter, brother, sister, nephew or niece of the individual, a grand-son or grand-daughter of the individual.

§ 3. Payment for securing retirement annuities (Section 80E)—With effect from the assessment year 1965-66 contributions made to an approved fund by an Indian citizen resident in India and partner in a registered firm of Chartered Accountants, Solicitors, Lawyers, Architects etc. have been excluded from the computation of his gross total income. The deduction is limited to 10% of the gross total income with a maximum of Rs. 5,000. But the deduc-

tion will not be made in the case of an individual whose gross total income includes income chargeable under "Interest on Securities," "Income from House property", "Capital Gains" and "Income from other sources" amounting to more than Rs. 10,000 or who is entitled to any pension or participating in any pension or super-annuation scheme.

The deduction shall be allocated against the income under the head "Profits and gains of business or profession" and shall not in any case exceed the income therefrom.

The Annuity repayable later on to the individual shall be deemed to be his income and shall be chargeable to tax accordingly in that relevant year.

§ 4. **Educational expense (Section 80F)**—With effect from the assessment year 1968-69 provision has been made for a deduction from the computation of gross total income of an individual who is resident but is not a citizen of India in respect of educational expenses incurred by him for full time education of his children outside India. The total amount of deduction is Rs. 1,500 for each child subject to a maximum of Rs. 3,000.

§ 5. **Donation for Charitable purposes (Section 80G)**—With effect from the assessment year 1968-69 provision has been made for a deduction of 50% in the case of a company and 55% in the case of any other assessee of the amount of donations amounting to more than Rs. 250 made to any Institution or Fund established in India for charitable purposes. The maximum limit of donation is 10% of the gross total income as reduced by the non-taxable portion thereof or Rs. 2,00,000 whichever is less. (Vide Illustrations 36 and 42)

§ 6. **New Industrial undertakings employing displaced persons (Section 80H)**—With effect from the assessment year 1968-69 provision has been made for a deduction of 50% of the income with a maximum of Rs. 1,00,000 arising to a new industrial undertaking employing a minimum number of 40 workers of every working day, 60% of which must be displaced persons or repatriates from East Pakistan, Burma, Ceylon etc. To secure exemption the industrial undertakings must not be formed by splitting or reconstructing an old business concern but newly set up and must begin to manufacture or produce articles any time during 1st April, 1967 and 31st March, 1970. The deduction is admissible from the assessment year relevant to the year in which the production starts for 10 years.

§ 7. **Profits of specified industries (Section 80I)**—With effect from the assessment year 1966-67 provision was made for a deduction of 8% of the profits arising to an Indian Company in which the public are not substantially interested or any other non-Indian-Company which has made the prescribed arrangements for the declaration and payment of dividends within India, out of generation or distribution of electricity or any other form of power or of construction, manufacture or production of anything specified in the Sixth Schedule. This deduction is not available to a company whose total income is less than Rs. 25,000.

§ 8. **New Industrial undertakings or ships or hotel business (Section 80J)**—To secure exemption, the industrial undertaking must not be formed by splitting or reconstructing an old business concern but newly set up after 1st April, 1948, employing more than 10 persons where the manufacturing process is carried on with the aid of power and 20 persons in other cases. In the case

of hotels the exemption was allowed from the assessment year 1961-62 to Indian Companies which had a paid-up capital of Rs. 5 lakhs or more and were approved by the Central Government for tourist purpose. In the case of Indian shipping Companies the exemption was allowed from the assessment year 1967-68. The exemption is limited to 6% of the capital employed in the business and is admissible from the assessment year relevant to the year in which the production starts for six years in the case of a Co-operative Society and for four years in the case of other Industrial undertaking, hotel and shipping companies. Where the amount of income is less than 6% of the capital employed the deficiency will be carried forward from the assessment year 1968-69 for seven years in the case of a Co-operative Society and for five years in the case of other concerns.

§ 9. Dividends from new industrial undertakings, hotels or shipping business (Section 80K)—Dividends paid out of exempted profits (tax holiday) of new Industrial undertakings, hotels and shipping business are not includible in the computation of gross total income of the share-holders of the respective organisations from the assessment year 1968-69.

§ 10. Dividends from Indian Companies (Section 80L)—With effect from the assessment year 1968-69 dividends received from Indian companies amounting to less than Rs. 500 are not includible in the computation of gross total income of any assessee. If the amount is more than Rs. 500 then the entire amount should be included. Where an assessee is also entitled for a deduction in respect of dividends from new industrial undertakings etc the amount of Rs. 500 should be reduced by such "tax holiday". Dividends. With effect from the assessment year 1969-70 the non-includible amount shall be the first Rs. 500 of the entire dividend. The exempted amount was increased to Rs. 1,000 with effect from the assessment year 1970-71.

§ 11. Intercorporate dividends (Section 80M)—With effect from the assessment year 1968-69 dividends received by a company from a "domestic company" shall not be included in the computation of gross total income of the recipient company in the following manner—

- (a) Dividends received by a "Foreign Company" 80% of such dividends from a closely held Indian Company mainly engaged in priority Industries
- (b) Dividends received by a "Foreign Company" 65% of such dividends from any "Domestic Company" [other than an Indian Company referred in (a)].
- (c) Dividends received by any "Domestic 60% of such dividends Company" from any other "Domestic Company"

§ 12. Royalty regarding "technical know-how" (Section 80MM)—With effect from the assessment year 1970-71 an Indian Company which provides "technical know-how" to any person carrying on a business in India will be entitled to deduct 40% of any royalty, commission, fees or any other receipts (excluding "capital gains") in the computation of its total income. This deduction will be available where the "technical know-how" is likely to assist in the manufacture or processing of goods or materials, installation or erection of machinery and plant, mining including prospecting, or in agriculture, animal husbandry, dairy, or poultry farming, forestry or fishing and the royalty, commission, fees etc. are receivable in terms of an agreement entered after 1st April, 1969 and approved by the Central Government before 1st October of the relevant assessment year.

§ 13. Dividends from non-Indian Companies (Section 80N)—60% of the dividends received on shares allotted by a non-Indian Company in consideration of any patent, invention, model design, secret formula or process or similar property right or information concerning industrial, commercial or scientific knowledge, experience or skill or technical services rendered by an Indian company to the non-Indian company under an agreement approved by the Central Government, shall not be included in the computation of gross total income of the recipient company with effect from the assessment year 1968-69. With effect from the assessment year 1969-70 the non-includible amount has been raised to 100% of the dividend.

§ 14. Royalties, Commission, Fees etc. (Section 80-O)—60% of the Royalty, Commission, Fees or similar payment received by an Indian Company from a non-Indian company in consideration of the supply of technical "know-how" or technical services to the non-Indian company in pursuance of an agreement approved by the Central Government shall not be included in the computation of gross total income of the recipient company with effect from the assessment year 1968-69. With effect from the assessment year 1969-70 the non-includible amount has been raised to 100% of the Royalty, Commission, Fees, etc.

§ 15. Income of Co-operative Societies (Section 80P)—With effect from the assessment year 1968-69 the entire income of the following category of Co-operative Societies has been excluded from the computation of gross total income—(i) Societies carrying on the business of banking or providing credit facilities to its members, or carrying on a cottage industry or the marketing of the agricultural produce of its members or the purchase of agricultural implements, seeds, live-stock or other articles intended for agriculture for the purpose of supplying them to its member, or the processing, without the aid of power, of the agricultural produce of its members. (ii) Societies being primary societies engaged in supplying milk raised by its members to a Federal Milk Co-operative Society. (iii) In respect of any income derived by the Society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities. (iv) In respect of interest or dividends derived by the Society from its investments with any other Society. (v) In respect of interest on securities and income from House Properties in the case of Societies other than a Housing Society, an Urban Consumer's Society or a Society carrying on transport business or a Society engaged in the performance of any manufacturing operations with the aid of power where the gross total income of the Society does not exceed Rs. 20,000.

§ 16. Dividends from Co-operative Societies (Section 80Q)—Dividends paid out of the exempted profits of Co-operative Societies are not includible in the gross total income of the share-holders from the assessment year 1968-69.

§ 17. Remuneration for services rendered outside India by a teacher (Section 80R)—With effect from 1st April, 1966 provision was made for a deduction of 50% of the remuneration for the first 36 months for rendering services outside India by a professor, teacher or research worker who is a resident individual as also a citizen of India from any foreign university or other educational institution or any foreign notified association.


§ 18. Professional income from Foreign sources (Section 80RR)—With effect from the assessment year 1970-71 an author, play-wright, artist, musician or actor, resident in India, deriving income from his profession from any foreign source will be entitled to deduct 25% of such income which is

received in or brought into India in accordance with the Foreign Exchange Regulation Act, 1947 and any rules made thereunder.

§ 19. Compensation for termination of Managing Agency etc. (Section 80S)—Compensation or similar payments received by an assessee other than a company on the termination or variation of managing agency, commission agency or any other similar agency is taxable as income from business, profession or vocation, in terms of Section 28(ii). As the lump receipt will be treated as income of one year, the amount of tax payable would, therefore, be heavy. To remove this hardship, 25% of such compensation, subject to a maximum of Rs. 1 lakh, shall be deducted and the balance amount shall be included in the computation of the gross total income from the assessment year 1968-69.

§ 20. Long-term Capital Gains (Section 80T)—Profits arising to an assessee other than a company from sale of "Long-term Capital Asset" shall be excluded with effect from the assessment year 1968-69 in full if the gross total income of the assessee is less than Rs. 10,000. If the gross total income is more than Rs. 10,000, then the first Rs. 5,000 of the profits arising from sale of "Long-term Capital Asset" comprising of lands or buildings and 45% of the balance shall be excluded with effect from the assessment year 1968-69 from the gross total income. If the gross total income is more than Rs. 10,000 and the profits arise only, from sale of "Long-term capital assets" other than lands and buildings (i. e. shares, securities etc.) then the first Rs. 5,000 of such profits and 65% of the balance shall be excluded from the computation of gross total income with effect from the assessment year 1968-69. (Vide Illustration No. 28.) [Revisional problems—Question No. 49].

§ 21. Blind Persons (Section 80U)—With effect from the assessment year 1969-70 provision has been made for a deduction of Rs. 2,000 from the gross total income of a resident individual who is totally blind at the end of the relative "Previous year."



CHAPTER XVI

RATE OF TAX

§ 1. Rate of Income-tax—Indian Income-tax Act contemplates an annual Finance Act fixing the rate of tax in relation to the total income of the previous year. Income-tax is thus an annual tax not only in the sense that it is imposed annually by the Legislature, but also in the sense that it is annual in its collection. Although it was originally imposed as a temporary tax, the Act regulating its collection have always been so drawn as to expire automatically at the end of the period of such imposition. The period being for a fiscal year only, the Income-tax Act provides that if on the 1st day of April in any year the Finance Act is not passed, the rates imposed by the previous Finance Act or the rates proposed in the pending Bill whichever is advantageous to the assessee, should be levied. (Section 294)

The rates are levied under "Slab system" by which successive slices of total income are charged at progressively higher rates. Different slabs being liable to tax at different rates, an average rate of tax is determined by dividing the amount of tax calculated by the amount of total income. Rebate admissible in respect of interest on tax-free securities etc., is then calculated at the average rate. The principle adopted is to calculate the tax on the "total income" of the assessee and to levy that portion of it which the taxable income bears to the "total income".

Paragraph "A"

In the case of every individual or Hindu undivided family or unregistered firm or other association of persons or body of individuals, whether incorporated or not or every artificial juridical person referred to in sub-clause (vii) of clause (31) of Section 2 of the Income-tax Act, not being a case to which Paragraph "B", "C", "D", "E" or "F" applies.

Rates of Income-tax

Assessment year 1969-70

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| (1) | where the total income does not exceed Rs. 5,000. | 5 per cent. of the income ; |
| (2) | where the total income exceeds Rs. 5,000 but does not exceed Rs. 10,000. | Rs. 250 plus 10 per cent. of the amount by which the total income exceeds Rs. 5,000 ; |
| (3) | where the total income exceeds Rs. 10,000 but does not exceed Rs. 15,000. | Rs. 750 plus 15 per cent. of the amount by which the total income exceeds Rs. 10,000 ; |
| (4) | where the total income exceeds Rs. 15,000 but does not exceed Rs. 20,000. | Rs. 1,500 plus 20 per cent. of the amount by which the total income exceeds Rs. 15,000 ; |

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| (5) | where the total income exceeds Rs. 20,000 but does not exceed Rs. 25,000. | Rs. 2,500 plus 30 per cent. of the amount by which the total income exceeds Rs. 20,000 ; |
| (6) | where the total income exceeds Rs. 25,000 but does not exceed Rs. 30,000. | Rs. 4,000 plus 40 per cent. of the amount by which the total income exceeds Rs. 25,000 ; |
| (7) | where the total income exceeds Rs. 30,000 but does not exceed Rs. 50,000 | Rs. 6,000 plus 50 per cent. of the amount by which the total income exceeds Rs. 30,000 ; |
| (8) | where the total income exceeds Rs. 50,000 but does not exceed Rs. 70,000. | Rs. 16,000 plus 60 per cent. of the amount by which the total income exceeds Rs. 50,000 ; |
| (9) | where the total income exceeds Rs. 70,000 but does not exceed Rs. 1,00,000 | Rs. 28,000 plus 65 per cent. of the amount by which the total income exceeds Rs. 70,000 ; |
| (10) | where the total income exceeds Rs. 1,00,000 but does not exceed Rs. 2,50,000. | Rs. 47,500 plus 70 per cent. of the amount by which the total income exceeds Rs. 1,00,000 ; |
| (11) | where the total income exceeds Rs. 2,50,000 | Rs. 1,52,500 plus 75 per cent. of the amount by which the total income exceeds Rs. 2,50,000 ; |

Provided that for the purpose of this Paragraph, in the case of a person, not being a non-resident individual (male or female) or a Hindu undivided family, the income-tax computed at the rates hereinbefore specified shall be reduced by—

- (a) Rs. 125 in the case of an unmarried individual (male or female) ;
- (b) Rs. 200 in the case of a married individual (male or female) who has no child mainly dependent on him or her or a Hindu undivided family which has no minor co-percener ;
- (c) Rs. 220 in the case of a married individual (male or female) who has one child mainly dependent on him or her or a Hindu undivided family which has one minor co-percener mainly supported from the income of such family.
- (d) Rs. 240 in the case of a married individual (male or female) who has more than one child mainly dependent on him or her or a Hindu undivided family which has more than one minor co-percener mainly supported from the income of such family.

In the case of a married individual (male or female) whose spouse has a total income exceeding Rs. 4,000, the amounts of Rs. 200, Rs. 220 and Rs. 240 should, however, be reduced to Rs. 125, Rs. 145 and Rs. 165 respectively.

No income tax is payable on a total income which is less than Rs. 4,000. To explain, if the total income for the year ended 31st March, 1969 (Assessment year 1969-70) is Rs. 3,900 income-tax payable shall be NIL although income-tax payable on Rs. 3,900 @5% i.e. Rs. 195 less personal allowance of Rs. 125 will be Rs. 70 in the case of an unmarried individual (male or female). The limit of Rs. 4,000 is increased to Rs. 7,000 if the assessee is a Hindu undivided family having at least two male members of more than 18 years old (neither of whom is a lineal descendent of the other)

In addition, income-tax payable shall not exceed 40% of the amount by which the total income exceeds Rs. 4,000 (or Rs. 7,000 as the case may be). To explain, if the total income of an unmarried individual (male or female) assessee is Rs. 4,050, income-tax payable on Rs. 4,050 @ 5% i.e. Rs. 202·05 less personal allowance of Rs. 125 will be Rs. 77·05 but the amount shall be restricted to 40% of Rs. 50. i.e. Rs. 20.

In addition to spouse allowance and children allowance, dependent parents and grand-parents (having annual income of less than Rs. 1,000) allowance shall be allowed at the rate of Rs. 20 if the total income of the individual (male or female) is less than Rs. 10,000. To explain, if the total income of the individual (male or female) is less than Rs. 10,000 then in calculating the amount of income-tax the following amounts shall be deducted—

- (a) Rs. 125 plus Rs. 20 i.e. Rs. 145 for an unmarried individual (male or female) having dependent parents.
- (b) Rs. 200 plus Rs. 20 i.e. Rs. 220 for a married individual (male or female) having dependent parents.
- (c) Rs. 220 plus Rs. 20 i.e. Rs. 240 for a married individual (male or female) having one dependent child in addition to dependent parents.
- (d) Rs. 240 plus Rs. 20 i.e. Rs. 260 for a married individual (male or female) having more than one dependent child in addition to dependent parents.

In the case of a married individual (male or female) whose spouse has a total income exceeding Rs. 4,000, the amounts of Rs. 220, Rs. 240 and Rs. 260 should, however, be reduced to Rs. 145, Rs. 165 and Rs. 185 respectively.

Surcharge on income-tax.

The amount of income-tax calculated after adjustment of personal allowance, spouse allowance, children allowance and parents allowance (where applicable) shall be increased by a surcharge at the rate of 10% of such income-tax. It has been explained in the illustrations.

Rates of Income-tax

Assessment year 1970-71.

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| (1) where the total income does not exceed Rs. 5,000 | 5 per cent. of the total income ; |
| (2) where the total income exceeds Rs. 5,000 but does not exceed Rs. 10,000 | Rs. 250 plus 10 per cent. of the amount by which the total income exceeds Rs. 5,000 ; |
| (3) where the total income exceeds Rs. 10,000 but does not exceed Rs. 15,000 | Rs. 750 plus 17 per cent. of the amount by which the total income exceeds Rs. 10,000 ; |
| (4) where the total income exceeds Rs. 15,000 but does not exceed Rs. 20,000 | Rs. 1,600 plus 23 per cent. of the amount by which the total income exceeds Rs. 15,000 ; |

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| (5) | where the total income exceeds Rs. 20,000 but does not exceed Rs. 25,000 | Rs. 2,750 plus 30 per cent. of the amount by which the total income exceeds Rs. 20,000 ; |
| (6) | where the total income exceeds Rs. 25,000 but does not exceed Rs. 30,000 | Rs. 4,250 plus 40 per cent. of the amount by which the total income exceeds Rs. 25,000 ; |
| (7) | where the total income exceeds Rs. 30,000 but does not exceed Rs. 50,000 | Rs. 6,250 plus 50 per cent. of the amount by which the total income exceeds Rs. 30,000 ; |
| (8) | where the total income exceeds Rs. 50,000 but does not exceed Rs. 70,000 | Rs. 16,250 plus 60 per cent. of the amount by which the total income exceeds Rs. 50,000 ; |
| (9) | where the total income exceeds Rs. 70,000 but does not exceed Rs. 1,00,000 | Rs. 28,250 plus 65 per cent. of the amount by which the total income exceeds Rs. 70,000 ; |
| (10) | where the total income exceeds Rs. 1,00,000 but does not exceed Rs. 2,50,000 | Rs. 47,750 plus 70 per cent. of the amount by which the total income exceeds Rs. 1,00,000 ; |
| (11) | where the total income exceeds Rs. 2,50,000 | Rs. 1,52,750 plus 75 per cent. of the amount by which the total income exceeds Rs. 2,50,000 ; |

Provided that for the purpose of this Paragraph, in the case of a person, not being a non-resident individual (male or female) or a Hindu undivided family, the income-tax computed at the rates hereinbefore specified shall be reduced by—

- (a) Rs. 125 in the case of an unmarried individual (male or female) ;
- (b) Rs. 200 in the case of a married individual (male or female) who has no child mainly dependent on him or her or a Hindu undivided family which has no minor co-percener ;
- (c) Rs. 220 in the case of a married individual (male or female) who has one child mainly dependent on him or her or a Hindu undivided family which has one minor co-percener mainly supported from the income of such family.
- (d) Rs. 240 in the case of a married individual (male or female) who has more than one child mainly dependent on him or her or a Hindu undivided family which has more than one minor co-percener mainly supported from the income of such family.

In the case of a married individual (male or female) whose spouse has a total income exceeding Rs. 4,000, the amounts of Rs. 200, Rs. 220 and Rs. 240 should, however, be reduced to Rs. 125, Rs. 145 and Rs. 165 respectively.

No income tax is payable on a total income which is less than Rs. 4,000. To explain, if the total income for the year ended 31st March, 1970 (Assessment year 1970-71) is Rs. 3,900 income-tax payable shall be NIL although income-tax payable on Rs. 3,900 @ 5% i.e. Rs. 195 less personal allowance of Rs. 125 will be Rs. 70 in the case of an unmarried individual (male or female). The limit of Rs. 4,000 is increased to Rs. 7,000 if the assessee

is a Hindu undivided family having at least two male members of more than 18 years old (neither of whom is a lineal descendent of the other).

In addition, income-tax payable shall not exceed 40% of the amount by which the total income exceeds Rs. 4,000 (or Rs. 7,000 as the case may be). To explain, if the total income of an unmarried individual (male or female) assessee is Rs. 4,050, income-tax payable on Rs. 4,050 @ 5% i.e. Rs. 202.05 less personal allowance of Rs. 125 will be Rs. 77.05 but the amount shall be restricted to 40% of Rs. 50 i.e. Rs. 20.

In addition to spouse allowance, and children allowance, dependent parents and grand-parents (having annual income of less than Rs. 1,000) allowance shall be allowed at the rate of Rs. 20 if the total income of the individual (male or female) is less than Rs. 10,000. To explain, if the total income of the individual (male or female) is less than Rs. 10,000 then in calculating the amount of income-tax the following amounts shall be deducted—

- (a) Rs. 125 plus Rs. 20 i.e. Rs. 145 for an unmarried individual (male or female) having dependent parents.
- (b) Rs. 200 plus Rs. 20 i.e. Rs. 220 for a married individual (male or female) having dependent parents.
- (c) Rs. 220 plus Rs. 20 i.e. Rs. 240 for a married individual (male or female) having one dependent child in addition to dependent parents.
- (d) Rs. 240 plus Rs. 20 i.e. Rs. 260 for a married individual (male or female) having more than one dependent child in addition to dependent parents.

In the case of a married individual (male or female) whose spouse has a total income exceeding Rs. 4,000, the amounts of Rs. 220, Rs. 240 and Rs. 260 should however, be reduced to Rs. 145, Rs. 165 and Rs. 185 respectively.

Surcharge on income-tax

The amount of income-tax calculated after adjustment of personal allowance, spouse allowance, children allowance and parents allowance (where applicable) shall be increased by a surcharge at the rate of 10% of such income-tax. It has been explained in the illustrations.

Paragraph "B"

In the case of every association of persons being a Co-operative Society as defined in clause (19) of Section 2 of the Income-tax Act. :

Rates of Income-tax

Assessment Year 1969-70

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| (1) where the total income does not exceed Rs. 5,000 | 5 per cent of the total income ; |
| (2) where the total income exceeds Rs. 5,000 but does not exceed Rs. 10,000 | Rs. 250 plus 10 per cent of the amount by which the total income exceeds Rs. 5,000 ; |
| (3) where the total income exceeds Rs. 10,000 but does not exceed Rs. 15,000 | Rs. 750 plus 15 per cent of the amount by which the total income exceeds Rs. 10,000 ; |

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| (4) | where the total income exceeds Rs. 15,000 but does not exceed Rs. 20,000 | Rs. 1,500 plus 20 per cent of the amount by which the total income exceeds Rs. 15,000 ; |
| (5) | where the total income exceeds Rs. 20,000 but does not exceed Rs. 25,000 | Rs. 2,500 plus 25 per cent of the amount by which the total income exceeds Rs. 20,000 ; |
| (6) | where the total income exceeds Rs. 25,000 | Rs. 3,750 plus 41 per cent of the amount by which the total income exceeds Rs. 25,000. |

No income-tax is payable on a total income which is less than Rs. 4,000. In addition, income-tax payable shall not exceed 40% of the amount by which the total income exceeds Rs. 4,000.

Surcharge on income-tax

The amount of income-tax computed at the rates hereinbefore specified shall be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent of such income-tax.

Assessment year 1970-71

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| (1) | where the total income does not exceed Rs. 10,000 | 15 per cent of the total income ; |
| (2) | where the total income exceeds Rs. 10,000 but does not exceed Rs. 20,000 | Rs. 1,500 plus 25 per cent of the amount by which the total income exceeds Rs. 10,000 ; |
| (3) | where the total income exceeds Rs. 20,000 | Rs. 4,000 plus 40 cent of the amount by which the total income exceeds Rs. 20,000. |

Surcharge on Income-tax

The amount of income-tax computed at the rates hereinbefore specified shall be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent of such income-tax.

Paragraph "C"

In the case of every Local Authority :

Rate of Income-tax

Assessment year 1969-70 and 1970-71

On the whole of the total income—50 per cent.

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified shall be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent of such income-tax.

Paragraph "D"

In the case of every Registered firm :

Rates of Income-tax**Assessment year 1969-70**

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|-----|---|--|
| (1) | Where the total income does not exceed Rs. 25,000. | Nil |
| (2) | Where the total income exceeds Rs. 25,000 but does not exceed Rs. 50,000 ; | 6 per cent of the amount by which the total income exceeds Rs. 25,000 ; |
| (3) | Where the total income exceeds Rs. 50,000 but does not exceed Rs. 1,00,000. | Rs. 1,500 plus 12 per cent of the amount by which the total income exceeds Rs. 50,000 ; |
| (4) | Where the total income exceeds Rs. 1,00,000. | Rs. 7,500 plus 20 per cent of the amount by which the total income exceeds Rs. 1,00,000. |

Surcharges on Income-tax

The amount of income-tax computed at the rates hereinbefore specified shall be increased by the aggregate of surcharges for purposes of the Union calculated as specified hereunder—

- (a) in the case of a registered firm whose total income includes income derived from a profession carried on by it and the income so included is not less than fifty-one per cent. of such total income, a surcharge calculated at the rate of ten per cent of the amount of income-tax computed at the rates hereinbefore specified ;
- (b) in the case of any other registered firm, a surcharge calculated at the rate of twenty per cent of the amount of income-tax computed at the rates hereinbefore specified ; and
- (c) a special surcharge calculated at the rate of ten per cent of the aggregate of the following amounts, namely—
 - (i) the amount of income-tax computed at the rates hereinbefore specified ; and
 - (ii) the amount of the surcharge calculated in accordance with clause (a), or, as the case may be, clause (b) of this sub-paragraph.

Assessment year 1970-71

- | | | |
|-----|---|---|
| (1) | where the total income does not exceed Rs. 10,000. | Nil |
| (2) | where the total income exceeds Rs. 10,000 but does not exceed Rs. 25,000. | 4 per cent of the amount by which the total income exceeds Rs. 10,000 ; |

- | | | |
|-----|---|---|
| (3) | where the total income exceeds Rs. 25,000 but does not exceed Rs. 50,000. | Rs. 600 plus 6 per cent. of the amount by which the total income exceeds Rs. 25,000 ; |
| (4) | where the total income exceeds Rs. 50,000 but does not exceed Rs. 1,00,000. | Rs. 2,100 plus 12 per cent. of the amount by which the total income exceeds Rs. 50,000 ; |
| (5) | where the total income exceeds Rs. 1,00,000. | Rs. 8,100 plus 20 per cent. of the amount by which the total income exceeds Rs. 1,00,000. |

Surcharges on Income-tax

The amount of income-tax at the rates hereinbefore specified shall be increased by the aggregate of surcharges for purposes of the Union calculated as specified hereunder—

- (a) in the case of a registered firm whose total income includes income derived from a profession carried on by it and the income so included is not less than fifty-one per cent. of such total income, a surcharge calculated at the rate of ten per cent. of the amount of income-tax computed at the rates hereinbefore specified ;
- (b) in the case of any other registered firm, a surcharge calculated at the rate of twenty per cent. of the amount of income tax computed at the rates hereinbefore specified ; and
- (c) a special surcharge calculated at the rate of ten per cent. of the aggregate of the following amounts, namely—
 - (i) the amount of income-tax computed at the rates hereinbefore specified ; and
 - (ii) the amount of the surcharge calculated in accordance with clause (a) or, as the case may be, clause (b) of this sub-paragraph.

Paragraph "E"

In the case of the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 :

Assessment years 1969-70 and 1970-71

- (1) on that part of its total income which consists of profits and gains from life insurance business. 52·5 per cent.
- (2) on the balance, if any, of the total income. The rate of income-tax applicable in accordance with Paragraph F of this part, to the total income of a domestic Company which is a company in which the public are substantially interested.

Paragraph "F"

In the case of a Company, other than the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956—

Assessment years 1969-70 and 1970-71**I. In the case of a domestic company :**

- (1) Where the company is a company in which the public are substantially interested,—
 - (i) in the case where the total income does not exceed Rs. 50,000. 45 per cent of the total income.
 - (ii) in the case where the total income exceeds Rs. 55,000. 55 per cent of the total income.
- (2) Where the company is not a company in which the public are substantially interested,—
 - (i) in the case of an industrial company
 - (a) on so much of the total income as does not exceed Rs. 10,00,000. 55 per cent.
 - (b) on the balance, if any, of the total income. 60 per cent.
 - (ii) in any other case 65 per cent. of the total income :

Provided that the income-tax payable by a domestic company, being a company in which the public are substantially interested, the total income of which exceeds Rs. 50,000 shall not exceed the aggregate of—

(a) the income-tax which would have been payable by the company if its total income had been Rs. 50,000 (the income of Rs. 50,000 for this purpose being computed as if such income included from various sources in the same proportion as the total income of the company) ; and

(b) 80 per cent of the amount by which the total income exceeds Rs. 50,000.

II. In the case of a company other than a domestic company :

- (i) on so much of the total income as consist of
 - (a) royalties received from an Indian concern in pursuance of an agreement made by it with the Indian concern after the 31st day of March, 1961, or
 - (b) fees for rendering technical services received from an Indian concern in pursuance of an agree-

ment made by it with the Indian concern after the 29th day of February 1964,

and where such agreement has, in either case, been approved by the Central Government 50 per cent.

- (ii) on the balance, if any, of the total income. 70 per cent.

Illustration 32.

Sri Mohini Mohan Mukherjee (Bachelor), a Resident and Ordinary Resident in the accounting year, had the following sources of income during the year ended 31st March, 1970. Calculate the amount of tax payable by him.

Professional Income	Rs. 10,000
Income from House properties	6,000
Interest of Fixed Deposit and Current A/c	2,000
Total Income	Rs. 18,000

Life Insurance Premium paid Rs. 4,000—Capital value being Rs. 50,000 (without profits).

Accounting year 1. 4. 69 to 31. 3. 70—Assessment year 1970-71

Gross Total Income from all sources	Rs. 18,000
Less: 60% of Life Insurance premium of Rs. 4,000	2,400
Total Income	Rs. 15,600

Income-tax payable

Rs. 15,000		Rs. 1,600	
600	@ 23%	138	
		Rs. 1,738	
Less Personal allowance		125	Rs. 1,613

Special surcharge payable

10% of Rs. 1,613 (Rounded off)	161
Total amount payable	Rs. 1,774

Illustration 33.

Mr. N. Nicholson (married, no child), a non-Resident in the accounting year had the following sources of income during the year ended 31st March, 1970. Calculate the amount of tax payable or refundable.

	Amount of income	Tax deducted
Interest on securities	Rs. 6,000	Rs. 1,320
Rupee dividends	4,000	880
Interest on fixed deposit and current A/c.	2,000	440
	<hr/>	<hr/>
Total Indian Income	Rs. 12,000	Rs. 2,640
Foreign income	18,000	
	<hr/>	<hr/>
Total World Income	Rs. 30,000	Rs. 2,640
	<hr/>	<hr/>

ANSWER

Accounting year 1. 4. 69 to 31. 3. 70—Assessment year 1970-71

Income-tax payable

Rs. 10,000 2,000 @ 17%	Rs. 750 340	Rs. 1,090	
	<hr/>	<hr/>	
Special Surcharge @ 10% of Rs. 1,090	109		Rs. 1,199
		<hr/>	<hr/>
Tax deducted at source			Rs. 2,640
Less : Tax payable			1,199
			<hr/>
Refundable by the Revenue Authorities			Rs. 1,441
			<hr/>

Illustration 34.

From the following return of income of Sri Tarak Nath Chongdar (married, dependent child more than one), determine his liability to tax for the Assessment year 1970-71.

Return of Income

	Amount of Income	I/Tax deducted
Salaries	Rs. 24,000	Rs. 4,345
Interest on securities	6,000	1,320
Income from House properties	20,000	—
Rupee Dividends	10,000	2,200
	<hr/>	<hr/>
	Rs. 60,000	Rs. 7,865
	<hr/>	<hr/>

Life Insurance premium paid Rs. 10,000 capital value being Rs. 1,50,000 (without profits).

ANSWER**Accounting year 1. 4. 69 to 31. 3. 70—Assessment year 1970-71**

Gross Total Income from all sources		Rs. 60,000
Less : Life Insurance premium		
60% of Rs 5,000	Rs. 3,000	
50% of 5,000	2,500	5,500
		<hr/>
Total Income		Rs. 54,500
		<hr/>
Income-tax payable		
Rs. 50,000	Rs. 16,250	
4,500 @ 60%	2,700	
		<hr/>
Less : Family Allowance	Rs. 18,950	
	240	Rs. 18,710
		<hr/>
Special Surcharge payable		
10% of Rs. 18,710		1,871
		<hr/>
		Rs. 20,581
Less . Income-tax deducted		7,865
		<hr/>
Net amount payable		Rs 12,716
		<hr/>

Illustration 35.

Mr. P. E. Price (married, no child) of 1, Broad Street, Calcutta, a Resident and Ordinarily Resident in the accounting year, submitted his return of income as below. He paid Life Insurance premium of Rs. 8,000—Capital value being Rs. 1,00,000 (without profits). Calculate the amount of tax payable by him for the Assessment year 1970-71.

Return of Income

	Amount of income	Income-tax & surcharge paid
Interest on securities	Rs 14,000	Rs. 3,080
Income from House properties	36,000	—
Rupee Dividends (Gross)	20,000	4,400
Foreign Dividends (Gross)		
not brought into India	30,000	—
	<hr/>	<hr/>
Total Income	Rs. 1,00,000	Rs. 7,480
	<hr/>	<hr/>

ANSWER**Accounting year 1. 4. 69 to 31. 3. 70—Assessment year 1970-71.**

Gross Total Income from all sources		Rs. 1,00,000
Less: Life Insurance premium		
60% of Rs. 5,000	Rs. 3,000	
50% of Rs. 3,000	1,500	4,500
	<hr/>	<hr/>
Total Income		Rs. 95,500
		<hr/>

Income-tax payable

Rs. 70,000	Rs. 28,250	
25,500 @ 65%	16,575	
	<hr/>	
	Rs. 44,825	
Less: Marriage Allowance	200	
	<hr/>	Rs. 44,625
Special surcharge payable		
10% of Rs. 44,625 (Rounded off)		4,463
		<hr/>
		Rs. 49,088
Less : Income-tax and Surcharge on Income-tax paid at source		7,480
		<hr/>
Net amount payable		Rs. 41,608
		<hr/>

Illustration 36

From the following return of income of Dr. Debjibon Dafadar (married, no child), determine his liability to tax for the Assessment year 1970-71.

Return of Income		
	Amount of income	Tax deducted at source
Professional income	Rs. 40,000	—
Interest on securities	6,000	1,320
Rupee Dividends	4,000	880
	<hr/>	<hr/>
	Rs. 50,000	Rs. 2,200
	<hr/>	<hr/>

Life Insurance premium paid Rs. 8,000—Capital value being Rs. 1,00,000 (without profits). Donation to approved institutions paid Rs. 5,000.

ANSWER

Accounting year 1.4.69 to 31.3.70—Assessment year—1970-71.

Gross Total Income from all sources	Rs. 50,000
Less : Life Insurance premium	
60% of Rs. 5,000	Rs. 3,000
50% of 3,000	1,500
	<hr/>
	Rs. 45,500
Less : Donation of Rs. 5,000 limited to 10% of Rs. 45,500 i.e., Rs. 4,550 55% of Rs. 4,550 (Rounded off)	2,500
	<hr/>
Total Income	Rs. 43,000
	<hr/>

Income-tax payable		
Rs. 30,000	Rs. 6,250	
13,000 @ 50%	6,500	
	<hr/>	
Less : Marriage Allowance	Rs. 12,750	
	200	
	<hr/>	
		Rs. 12,550
Special surcharge payable		
10% of Rs. 12,550		1,255
		<hr/>
		Rs. 13,805
Less : Tax deducted at source		2,200
		<hr/>
Net amount payable		Rs. 11,605
		<hr/>

Illustration 37

Private income of the partners of Illustration 5—Debabrata Rs. 16,800 from professional fees. Dhananjoy Rs. 31,200 from cloth business. Durgadas sustained a loss of Rs. 5,600 in grain trade. Calculate the amount of tax payable by the firm and its partners if it is a registered one as also if it is an unregistered one. All the partners are married.

ANSWER

(1) If the firm is registered the amount of tax payable by the firm and its partners will be as follows :

Total Income of the firm	Rs. 40,000
<hr/>	
Income-tax payable on total income of Rs. 40,000 at the rates ruling in the Assessment year 1970-71.	
Rs. 25,000	Rs. 600
15,000 @ 6%	900
	<hr/>
	Rs. 1,500
Surcharge on income-tax payable on Rs. 40,000 at the rate ruling in the Assessment year 1970-71.	
20% of Rs. 1,500	300
	<hr/>
	Rs. 1,800
Special surcharge payable for the Assessment year 1970-71.	
10% of Rs. 1,800	180
	<hr/>
Total amount payable by the firm	Rs. 1,980
<hr/>	
Allocation to partners :	
Debabrata $\frac{18,200}{40,000}$ of Rs. 1,980	Rs. 900
Dhananjoy $\frac{13,800}{40,000}$ of 1,980	684
Durgadas $\frac{8,000}{40,000}$ of 1,980	396
	<hr/>
	Rs. 1,980
	<hr/>

Debabrata :	Share of the Firm	Rs. 18,200	
	Less : Income-tax paid by the Firm	900	Rs. 17,300
		<hr/>	
	Private Income		16,800
			<hr/>
	Total Income		Rs. 34,100
			<hr/>

Income-tax payable on Rs. 34,100 at the rates ruling in the Assessment year 1970-71.

Rs. 30 000	Rs. 6,250	
4,100 @ 50%	2,050	
	<hr/>	
	Rs. 8,300	
Less : Marriage Allowance	200	Rs. 8,100
	<hr/>	

Special surcharge payable for the assessment year 1970-71.

10% of Rs. 8,100 810

Total amount payable by Debabrata Rs. 8,910

Dhananjay :	Share of the Firm	Rs. 13,800	
	Less : Income-tax paid by the Firm	684	Rs. 13,116
		<hr/>	
	Private Income		31,200
			<hr/>
	Total Income (Rounded off)		Rs. 44,320
			<hr/>

Income-tax payable on Rs. 44,320 at the rates ruling in the Assessment year 1970-71.

Rs. 30,000	Rs. 6,250	
14,320 @ 50%	7,160	
	<hr/>	
	Rs. 13,410	
Less : Marriage Allowance	200	Rs. 13,210
	<hr/>	

Special surcharge payable for the Assessment year 1970-71

10% of Rs. 13,210 1,321

Total amount payable by Dhananjay Rs. 14,531

Durgadas :	Share of the firm	Rs. 8,000	Rs. 7,604
	Less : Income tax paid by the Firm	Rs. 396	
	Loss in grain trade	<u> </u>	5,600
	Total Income (Rounded off)		<u>Rs. 2,000</u>

As the total income is less than the minimum taxable figure of Rs. 4,000, Durgadas will not be liable to pay any tax.

(2) If the firm is unregistered the amount of tax payable by the firm and its partners will be as follows :

Total Income of the firm	<u>Rs. 40,000</u>
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Income-tax payable on Rs. 40,000 at the rates ruling in the Assessment year 1970-71.

Rs. 33,000	Rs. 6,250	
10,000 @ 50%	<u>5,000</u>	Rs. 11,250

Special surcharge payable for the Assessment year 1970-71.

10 % of Rs. 11,250	<u>1,125</u>
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Total amount payable by the firm	<u>Rs. 12,375</u>
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Debabrata :	Share of the firm	Rs. 18,200
	Private Income	16,800
	Total Income	<u>Rs. 35,000</u>

Income-tax payable

Rs. 30,000	Rs. 6,250	
5,000 @ 50%	<u>2,500</u>	
	Rs. 8,750	
Less : Marriage Allowance	<u>200</u>	Rs. 8,550

Less : Rebate on share of the firm in respect of which income-tax is payable by the firm.

Rs. 8,550 × 18,200	
<u>35,000</u>	4,496
Carried over	<u>Rs. 4,054</u>

Brought Forward	Rs. 4,054
Special surcharge payable	
10% of Rs. 4,054 (Rounded off)	405
Total amount payable by Debabrata	Rs. 4,459
Dhananjoy : Share of the firm	Rs. 13,800
Private Income	31,200
Total Income	Rs. 45,000

Income-tax payable

Rs. 30,000	Rs. 6,250	
15,000 (a 50%)	7,500	
	Rs. 13,750	
Less : Marriage Allowance	200	Rs. 13,550
Less : Rebate on share of the firm in respect of which income-tax is payable by the firm.		
Rs. 13,550 × 13,800		4,155
45,000		Rs. 9,395

Special surcharge payable

10% of Rs. 9,395 (Rounded off)	940
Total amount payable by Dhananjoy	Rs. 10,335
Durgadas : Share of the firm	Rs. 8,000
Loss in grain trade	5,600
Total Income	Rs. 2,400

Tax payable by Durgadas will be NIL as his total income is less than the taxable figure of Rs 4,000. He will be further entitled to carry forward the loss in grain trade to the succeeding year.

Illustration 38

The private income of the partners of Illustration 6 was as follows—Amar Rs. 4,000, Bagala Rs. 6,000 and Chandi Rs. 20,000. Calculate the amount of tax payable by the firm and its partners if it is a registered one as also if it is an unregistered one. All the partners are married.

ANSWER

(1) If the firm is registered the amount of tax payable by the firm and its partners will be as follows :

Total Income of firm	Rs. 7,500
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Income-tax payable on total income of Rs. 7,500 at the rates ruling in the Assessment year 1970-71.	NIL
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Surcharge on income-tax payable on Rs. 7,500 at the rates in the Assessment year 1970-71.	NIL
--	-----

Special surcharge payable for the Assessment year 1970-71.	NIL
--	-----

Total amount payable by the firm	NIL
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Amar : Share of the firm	Rs. 5,400
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Private Income	4,000
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Total Income	Rs. 9,400
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Income-tax payable on Rs. 9,400 at the rates ruling
in the Assessment year 1970-71.

Rs. 5,000	Rs. 250	
4,400 @ 10%	440	

	Rs. 690	
--	---------	--

Less : Marriage Allowance	200	Rs. 490
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Special surcharge payable for the Assessment year 1970-71 10% of Rs. 490	49
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Total amount payable by Amar	Rs. 539
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Bagala : Share of the firm	Rs. 4,900
Private Income	6,000

Total Income	Rs. 10,900
--------------	------------

Income-tax payable on Rs. 10,900 at the rates ruling
in the Assessment year 1970-71.

Rs. 10,000	Rs. 750	
900 @ 17%	153	

	Rs. 903	
	200	

Less : Marriage Allowance	200	
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Carried over	Rs. 703	
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Brought Forward	Rs. 703
Special surcharge payable for the Assessment year 1970-71.	
10% of Rs. 703 (Rounded off)	70
Total amount payable by Bagala	<u>Rs. 773</u>
Chandi : Share of the firm (Loss)	Rs. 2,800
Private Income	20,000
Total Income	<u>Rs. 17,200</u>

Income-tax payable on Rs. 17,200 at the rates ruling in the Assessment year 1970-71.

Rs. 15,000	Rs. 1,600	
2,200 @ 23%	506	
	<u>Rs. 2,106</u>	
Less : Marriage Allowance	200	Rs. 1,906

Special surcharge payable for the Assessment year 1970-71.

10% of Rs. 1,906 (Rounded off)	191
Total amount payable by Chandi	<u>Rs. 2,097</u>

(2) If the firm is unregistered, the amount of tax payable by the firm and its partners will be as follows .

Total Income of the firm	<u>Rs. 7,500</u>
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Income-tax payable on Rs. 7,500 at the rates ruling in the Assessment year 1970-71.

Rs. 5,000	Rs. 250	
2,500 @ 10%	250	Rs. 500

Special surcharge payable for the Assessment year 1970-71.

10% of Rs. 500	50
Total amount payable by the firm	<u>Rs. 550</u>
Amar : Share of the firm	Rs. 5,400
Private Income	4,000
Total Income	<u>Rs. 9,400</u>

Income-tax payable on Rs. 9,400 at the rates ruling in the Assessment year 1970-71.

Rs. 5,000	Rs. 250	
4,400 @ 10%	440	
	<hr/>	
Less : Marriage Allowance	Rs. 690	
	200	Rs. 490
	<hr/>	
Less : Rebate on share of the firm in respect of which income-tax is payable by the firm		
Rs. $490 \times 5,400$		281
<hr/>		
9,400		
		<hr/>
		Rs. 209

Special surcharge payable for the Assessment year 1970-71.

10% of Rs. 209 (Rounded off) 21

Total amount payable by Amar Rs 230

Bagala : Share of the firm Rs. 4,900
Private Income 6,000

Total Income Rs. 10,900

Income-tax payable on Rs. 10,900 at the rates ruling in the Assessment year 1970-71.

Rs. 10,000	Rs. 750	
900 @ 17%	153	
	<hr/>	
Less : Marriage Allowance	Rs. 903	
	200	Rs. 703
	<hr/>	
Less : Rebate on Share of firm in respect of which income-tax is payable by the firm.		
Rs. $703 \times 4,900$		316
<hr/>		
10,900		Rs. 387

Special surcharge payable for the Assessment year 1970-71.

10% of Rs. 387 (Rounded off) 39
Total amount payable by Bagala Rs. 426

Chandi : Share of the firm (Loss) Rs. 2,800
Private Income 20,000

Total Income Rs. 17,200

Income-tax payable on Rs. 17,200 at the rates ruling in the Assessment year 1970-71.

Rs. 15,000	Rs. 1,600	
2,200 @ 23 %	506	
	<hr/>	
	Rs. 2,106	
Less : Marriage Allowance	200	Rs. 1,906
	<hr/>	<hr/>
Income-tax payable on Private Income		
Rs. 1,906 × 20,000		Rs. 2,216
<hr/>		
17,200		

Special surcharge payable for the Assessment year 1970-71.

10 % of Rs. 2,216 (Rounded off)	222
	<hr/>
Total amount payable by Chandi	Rs. 2,438
	<hr/>

Illustration 39.

Private income of partners of Illustration 7—Diptish Rs. 12,000 from Professional fees, Fatick Rs. 1,000 from a Stationery shop and Hemanta Rs. 10,500 from Hardware business. Calculate the amount of tax payable by the firm and its partners if it is a registered one and also if it is an unregistered one. All the partners are married.

ANSWER

(1) If the firm is registered, the amount of tax payable by the partners will be as follows :

Diptish : Share of the firm	Rs. 4,000	Loss
Private Income	12,000	
	<hr/>	
Total Income	Rs. 8,000	
	<hr/>	

Income-tax payable on Rs. 8,000 at the rates ruling in the Assessment year 1970-71.

Rs. 5,000	Rs. 250
3,000 @ 10 %	300
	<hr/>
	Rs. 550
Less : Marriage allowance	200
	<hr/>
Carried over	Rs. 350

Brought Forward	Rs.	350
Special surcharge payable for the Assessment year 1970-71. 10% of Rs. 350		35
Total amount payable by Diptish	Rs.	385
Fatick : Share of the firm Private Income	Rs.	1,500 Loss 1,000
Total Income	Rs.	500 Loss

Fatick will be allowed to carry forward this loss of Rs. 500 for adjustment against this income from the firm in subsequent years.

Hemanta : Share of the firm Private Income	Rs.	1,000 Loss 10,500
Total Income	Rs.	9,500

Income-tax payable on Rs. 9,500 at the rates ruling in the Assessment year 1970-71

Rs. 5,000	Rs. 250
4,500 at 10%	450
	Rs. 700
Less : Marriage allowance	200
	Rs. 500

Special surcharge payable for the Assessment year 1970-71.
10% of Rs. 500

Total amount payable by Hemanta

50
Rs. 550

(2) If the firm is unregistered, the amount of income-tax payable by the firm will be NIL and it will be allowed to carry forward the amount of loss of Rs. 6,500 for adjustment against its income of the subsequent years. The partners will not be allowed to apportion this amongst themselves for setting off against their private income. The proportionate amount of loss will, however, be included in the computation of their income for the purpose of determining the average rate of tax applicable on their private income.

Tax payable by Diptish on Rs. 12,000 will be calculated as follows:

$12,000 \times \text{Rs. } 385$ (Rounded off)

8,000

Rs. 576

Tax payable by Fatick on Rs. 1,000 will be NIL

Tax payable by Hemanta on Rs. 10,500 will be calculated as follows :

10,500 × Rs. 550 (Rounded off)	
<u>9,500</u>	Rs. 608

Illustration 40.

Private income of the partners of Illustration 8—Indu Rs. 22,000, Jiban Rs. 14,000, Kali—NIL. Calculate the amount of tax payable by the partners if the firm is registered. All the partners are unmarried.

ANSWER

If the firm is registered, the amount of tax payable by the firm and its partners will be as follows :

Total Income of the firm	Rs. 35,000
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Income tax payable on total income of Rs. 35,000
at the rates ruling in the Assessment year 1970-71.

Rs. 25,000		Rs. 600	
10,000	@ 6%	600	Rs. 1,200

Surcharge on income-tax payable on Rs. 35,000
at the rate ruling in the Assessment year 1970-71.

20% of Rs. 1,200	Rs. 240
	<u>Rs. 1,440</u>

Special surcharge payable for the Assessment year 1970-71.

10% of Rs. 1,440	Rs. 144
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Total amount payable by the firm

Rs. 1,584

Allocation to partners :

Indu	19,000		
	<u>35,000</u>	of Rs. 1,584	Rs. 860
Jiban	11,000		
	<u>35,000</u>	of 1,584	498
Kali	5,000		
	<u>35,000</u>	of 1,584	226
			<u>Rs. 1,584</u>

Indu : Share of the firm Rs. 19,000
Less : Income-tax paid by the firm 860

Rs. 18,140

Private Income 22,000
Total Income Rs. 40,140

Income-tax payable on Rs. 40,140 at the rates ruling in the Assessment year 1970-71.

Rs. 30,000	Rs. 6,250	
10,140 @ 50 %	5,070	
	<hr/>	
Less : Personal allowance	Rs. 11,320	
	125	Rs. 11,195
	<hr/>	
Special surcharge payable for the Assessment year 1970-71.		
10% of Rs. 11,195 (Rounded off)		1,120
		<hr/>
Total amount payable by Indu		Rs. 12,315
		<hr/>
Jiban : Share of the firm	Rs. 11,000	
Less : Income-tax paid by the firm	498	Rs. 10,502
	<hr/>	
Private Income		14,000
		<hr/>
Total Income (Rounded off)		Rs. 24,500
		<hr/>

Income-tax payable on Rs. 24,500 at the rates ruling in the Assessment year 1970-71

Rs. 20,000	Rs. 2,750	
4,500 @ 30 %	1,350	
	<hr/>	
	Rs. 4,100	
Less : Personal allowance	125	Rs. 3,975
	<hr/>	
Special surcharge payable for the Assessment year 1970-71.		
10% of Rs. 3,975 (Rounded off)		398
		<hr/>
Total amount payable by Jiban		Rs. 4,373
		<hr/>
Kali : Share of the firm	Rs. 5,000	
Less : Income-tax paid by the firm	226	Rs. 4,774
	<hr/>	
Private Income		NIL
		<hr/>
Total Income (Rounded off)		Rs. 4,770
		<hr/>

Income-tax payable on Rs. 4,770 at the rates ruling in the Assessment year 1970-71.

Rs. 4,770 @ 5%	Rs. 238	
Less : Personal Allowance	125	Rs. 113
	<hr/>	
Special surcharge payable for the Assessment year 1970-71.		
10% of Rs. 113 (Rounded off)		11
		<hr/>
Total amount payable by Kali		Rs. 124
		<hr/>

Illustration 41.

Private income of the partners of Illustration 9—Lakshmi Rs. 28,000 from cloth business, Manick Rs. 15,000 from wine business and Narayan Rs. 40,000 from professional fees. Determine whether it is advantageous for the Revenue Authorities to assess the firm as registered or unregistered. All the partners are married.

ANSWER

(1) If the firm is registered, the amount of tax payable by the firm and its partners will be as follows :

Total Income of the firm		Rs. 45,000
<hr/>		
Income-tax payable on total income of Rs. 45,000 at the rates ruling in the Assessment year 1970-71.		
Rs. 25,000	Rs. 600	
20,000 @ 6%	1,200	Rs. 1,800
	<hr/>	
Surcharge on income-tax payable on Rs. 45,000 at the rate ruling in the Assessment year 1970-71		
20% of Rs. 1,800		360
		<hr/>
		Rs. 2,160
Special surcharge payable for the Assessment year 1970-71		
10% of Rs. 2,160		216
		<hr/>
Total amount payable by the firm		Rs. 2,376
<hr/>		
Allocation to partners :		
13,000		
Lakshmi <hr/> of Rs. 2,376		
45,000		Rs. 687
12,000		
Manik <hr/> of 2,376		
45,000		633
20,000		
Narayan <hr/> of 2,376		
45,000		1,056
		<hr/>
		Rs. 2,376
<hr/>		
Lakshmi : Share of the firm	Rs. 13,000	
Less : Income-tax paid by the firm	687	
	<hr/>	Rs. 12,313
Private Income		28,000
		<hr/>
Total Income (Rounded off)		Rs. 40,310
<hr/>		
Income-tax payable on Rs. 40,310 at the rates ruling in the Assessment year 1970-71.		
Rs. 30,000	Rs. 6,250	
10,310 @ 50%	5,155	
	<hr/>	
	Rs. 11,405	
Less : Marriage Allowance	200	
Carried over	<hr/>	Rs. 11,205

Brought Forward			Rs. 11,205
Special surcharge payable for the Assessment year 1970-71. 10% of Rs. 11,205 (Rounded off)			1,121
Total amount payable by Lakshmi			Rs. 12,326
Manik : Share of the firm	Rs. 12,000		
Less : Income-tax paid by the firm	633		Rs. 11,367
Private Income			15,000
Total Income (Rounded off)			Rs. 26,370
Income-tax payable on Rs. 26,370 at the rates ruling in the Assessment year 1970-71			
Rs. 25,000		Rs. 4,250	
1370 a 40%		548	
		Rs. 4,798	
Less : Marriage Allowance		200	Rs. 4,598
Special surcharge payable for the Assessment year 1970-71. 10% of Rs. 4,598 (Rounded off)			460
Total amount payable by Manick			Rs. 5,058
Narayan : Share of the firm	Rs. 20,000		
Less : Income-tax paid by the firm	1,056		Rs. 18,944
Private Income			40,000
Total Income (Rounded off)			Rs. 58,940
Income-tax payable on Rs. 58,940 at the rates ruling in the Assessment year 1970-71.			
Rs. 50,000		Rs. 16,250	
8,940 a 60%		5,364	
		Rs. 21,614	
Less : Marriage Allowance		200	Rs. 21,414
Special surcharge payable for the Assessment year 1970-71. 10% of Rs. 21,414 (Rounded off)			2,141
Total amount payable by Narayan			Rs. 23,555
Total Amount payable by the firm			Rs. 2,376
" " " " Lakshmi			12,326
" " " " Manick			5,058
" " " " Narayan			23,555
Total amount payable			Rs. 43,315

(2) If the firm is unregistered, the amount of tax payable by the firm and its partners will be as follows :

Total Income of the firm	Rs. 45,000
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Income-tax payable on Rs. 45,000 at the rates ruling in the Assessment year 1970-71.

Rs. 30,000	Rs. 6,250	
15,000 @ 50%	7,500	Rs. 13,750

Special surcharge payable for the Assessment year 1970-71.

10% of Rs. 13,750	1,375
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Total amount payable by the firm	Rs. 15,125
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**Lakshmi : Share of the firm
Private Income**

	Rs. 13,000
	28,000

Total Income	Rs. 41,000
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Income-tax payable on Rs. 41,000 at the rates ruling in the Assessment year 1970-71.

Rs. 30,000	Rs. 6,250	
11,000 @ 50%	5,500	
	Rs. 11,750	
Less : Marriage Allowance	200	Rs. 11,550

Less : Rebate on Share of the firm in respect of which income-tax is payable by the firm.

Rs. $11,550 \times 13.000$	3,662
4,000	Rs. 7,888

Special surcharge payable for the Assessment year 1970-71.

10% of Rs. 7,888 (Rounded off)	789
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Total amount payable by Lakshmi	Rs. 8,677
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**Manick : Share of the firm
Private Income**

**Rs. 12,000
15,000**

Total Income

Rs. 27,000

**Income-tax payable on Rs. 27,000 at the rates ruling
in the Assessment year 1970-71.**

Rs. 25,000 Rs. 4,250
2,000 @ 40% 800

Less : Marriage Allowance

**Rs. 5,050
200**

Rs. 4,850

**Less : Rebate on share of the firm in respect of
which income-tax is payable by the firm.**

Rs. $4,850 \times \frac{12,000}{27,000}$
2,155

Rs. 2,695

Special surcharge payable for the Assessment year 1970-71.

10% of Rs. 2,695 (Rounded off)

270

Total amount payable by Manick

Rs. 2,965

**Narayan : Share of the firm
Private Income**

**Rs. 20,000
40,000**

Total Income

Rs. 60,000

**Income-tax payable on Rs. 60,000 at the rates ruling
in the Assessment year 1970-71.**

Rs. 50,000 Rs. 16,250
10,000 @ 60% 6,000

Less : Marriage Allowance

**Rs. 22,250
200**

Rs. 22,050

**Less : Rebate on share of the firm in respect of
which income-tax is payable by the firm.**

Rs. $22,050 \times \frac{20,000}{60,000}$
7,350

Carried over

Rs. 14,700

Brought Forward	Rs. 14,700
Special surcharge payable for the Assessment year 1970-71. 10% of Rs. 14,700	1,470
Total amount payable by Narayan	Rs. 16,170
Total amount payable by the firm	Rs. 15,125
" " " " Lakshmi	8,677
" " " " Manick	2,965
" " " " Narayan	16,170
Total amount payable	Rs. 42,937

The firm will be assessed as a "registered firm" as the amount of tax payable in that case will be higher.

Illustration 42

From the following return of income of Sri Lalmohan Talapatra (married, dependent child more than one) for the year ended 31st March, 1970, calculate the amount of tax payable by him.

Business Profit	Rs. 25,000
Income from House properties	15,000
Total Income	Rs. 40,000

He paid Life Insurance premium of Rs. 8,000 (Capital value being Rs. 1,00,000 without profits). He also paid Rs. 4,000 as donation to an approved institution.

ANSWER

Accounting year 1-4-69 to 31-3-70—Assessment year 1970-71.

Business Profit	Rs. 25,000
Income from House properties	15,000
Gross Total Income from all sources	Rs. 40,000
Less : Life Insurance Premium	
60% of Rs. 5,000	Rs. 3,000
50% of Rs. 3,000	1,500
	4,500
	Rs. 35,500
Less : Donation of Rs. 4,000 limited to 10% of Rs. 35,500 i.e. Rs. 3,550—55% of Rs. 3,550 (Rounded off)	1,950
Total Income	Rs. 33,550

Income-tax payable on Rs. 33,550 at the rates ruling in the Assessment year 1970-71.

Rs. 30,000	Rs. 6,250	
3,550 @ 50%	1,775	
	<hr/>	
Less : Family Allowance	Rs. 8,025	
	240	Rs. 7,785
	<hr/>	

Special surcharge payable for the Assessment year 1970-71.

10% of Rs. 7,785 (Rounded off)	779
	<hr/>
Total amount payable	Rs. 8,564
	<hr/>



CHAPTER XVII

RELIEFS AND REFUNDS

§ 1. Relief for Double Taxation (Sections 90 & 91)—So long an income is taxed in the country of its origin, the position is simple. But if the income is taxed in more than one country on the basis of residence of the recipient, the position will be extremely complicated. Consequently, provisions have been made in the Indian Income-tax Act for granting appropriate relief in respect of the same income which has been subjected to tax in the same year in more than one country. Though this branch of the income-tax regulations involves numerous complexities in practice, the root principles by which the relief is given will be discussed hereinafter.

(a) Double Taxation avoidance agreement—Under this arrangement, income is taxed in the country of origin, the other country refrains from taxing the income again. In the case of business in which the manufacturing process is carried on in one country and the sale of the finished product is effected in another country, the entire income of the business is apportioned between the countries for the purpose of taxation. So far India has concluded agreements for avoidance of Double Taxation with Pakistan, Ceylon, Switzerland, Sweden, Germany (Federal Republic), Norway, Denmark, Finland, Japan, Greece, Austria, United Arab Republic and French Republic.

(b) Double income-tax relief—Under this arrangement, the recipient pays tax at the higher rate of the either country. Arrangements have so far been made with Aden, Kenya, Tanganyika, Uganda, Za'zibar, Gold Coast, Nigeria, Sierra Leone, Gambia and Mauritius for granting reciprocal relief in those countries and India in respect of any income which is taxed either by deduction at source or by direct taxation in those countries and in India. The relief admissible in India in respect of the doubly taxed income will be determined as follows :

(i) If the assessee is resident in India, the rate of relief shall be the foreign rate of tax when it does not exceed half of the Indian rate and in other cases half the Indian rate. To explain, if the Indian rate is 40% and the foreign rate is 15%, the relief in India will be restricted to 15%. If, on the other hand, the foreign rate is 30%, the relief will be restricted to 20% in India and 10% in the foreign country. In both these cases the assessee ultimately pays tax at the higher rate of the either country.

(ii) If the assessee is non-resident in India, the rate of relief shall be half of the foreign rate of tax if it does not exceed the Indian rate and in other cases the amount by which the Indian rate of tax exceeds half of the foreign rate.

(c) Unilateral tax relief—If an assessee who is resident in India in any "previous year" pays income-tax in respect of his income which arises

outside India, in a country which has not arranged for any double taxation avoidance agreement or any double taxation relief, he will be entitled to deduct from the Indian tax payable in respect of the same income the entire amount of the Indian tax or foreign tax whichever is less. To explain, if the doubly taxed income of a resident assessee be, say, Rs. 30,000, the Indian rate of tax, say 30%, and the foreign rate of tax, say 20%, then the amount of tax payable by the assessee in India should be reduced by Rs. 6,000 (i.e., 20% of Rs. 30,000). The concession is only as regards "Income arising outside India", as such it is not admissible if the income arises in India and is taxed in a non-reciprocating country in addition to India. Double Income-tax Relief arrangement with the United Kingdom terminated in the assessment year 1948-49. Since then unilateral relief arrangement in respect of income arising in non-reciprocating countries is being followed in respect of income arising in the United Kingdom.

§ 2. **Marginal Relief (Annual Finance Act)**—Under "slab" system of tax structure, successive slices of total income are charged at progressively higher rates. To explain, if an individual is married he pays no tax so long as his income is below Rs. 4,000; if his income increases to Rs. 4,050, he pays 5% on Rs. 50 only. But under "step" system, although he may not pay any tax so long as his income is below Rs. 4,000, he will be liable to pay 5% on the entire amount of his income of Rs. 4,050. Under "slab" system his liability will be Rs. 2·50 whereas under "step" system his liability will be Rs. 202·50. For an additional income of Rs. 50 his tax liability becomes Rs. 202·50 which is most inequitable. Against this background, the allowance of marginal relief operates.

In the Assessment years 1969-70 and 1970-71, the marginal relief will be allowed in the following cases :

(a) **Individual (Unmarried)**—For a total income of Rs. 3,999 no income-tax is payable, but as soon as the income is increased to Rs. 4,002 he is liable to pay income-tax @ 5% on Rs. 4,002, i.e., Rs. 200·10 less personal allowance of Rs. 125 i.e., Rs. 75·10, but under the scheme of marginal relief his liability will be fixed at 40% of Rs. 2 (Rs. 4,002 less Rs. 4,000) i.e., Re. 1—being rounded off under Section 288B of the Income-tax Act, 1961.

(b) **A Hindu undivided family having two male members of 18 years old**—The family does not pay any tax if the total income is Rs. 6,999, but as soon as the income increases to Rs. 7,002 the family is liable to pay income-tax as follows—

Rs. 5,000	@ 5%	Rs. 250·00
2,002	@ 10%	200·20
		<hr/>
		Rs. 450·20
Less : Family allowance		200·00
		<hr/>
Net amount payable		Rs. 250·20
		<hr/>

But under the scheme of marginal relief the liability of the family will be fixed @ 40% of Rs. 2 (Rs. 7,002 less Rs. 7,000) i.e., Re. 1—being rounded off under Section 288B of the Income-tax Act, 1961.

§ 3. **Refunds (Section 237)**—Refunds are necessitated owing to the system of "deduction of tax at source" as in the case of Salaries, interest on securities Dividends and certain other payments effected to non-residents. The average rate of tax, if any, appropriate to the "total income" of the recipient is not

known at the time the tax is deducted. It is quite likely in such cases that individual rate of tax would be lower than the rate at which the deductions are made.

If any Individual, Hindu undivided family, Company, Local Authority, Firm or other Association of persons or any partner of a firm or member of an association can prove to the satisfaction of the Income-tax Officer that the amount of tax paid by him or on his behalf or treated as paid on his behalf in any year exceeds the amount with which he is properly chargeable under the Act for that year, then he can apply for refund of tax overpaid. The application must be made in the prescribed form accompanied by a return of the "total income" unless such a return has already been submitted.

An Executor Administrator or other legal representative of a person who is dead, lunatic or otherwise incapacitated can lodge claims for a refund of tax for the benefit of such person. In cases where the applicant is a resident outside India whose income is wholly taxed at source or whose only income for direct assessment is derived from dividends or both, the application should be made to the Income-tax Officer. Non-Residents Refund Circle, Bombay. In case of other claimants the application should be submitted to the Income-tax Officer within whose jurisdiction they ordinarily reside.

Section 203 makes it obligatory upon the person deducting income-tax to issue a certificate specifying the amount of tax deducted from the income concerned and the rate at which it has been deducted.

The onus of proving the claim to a refund and therefore of adducing satisfactory evidence of his total income lies on the claimant, and if he fails to discharge it, his claim will be rejected. Certificates of the Revenue Authorities of the United Kingdom or of a Dominion will normally be accepted as proof of the amount of income arising or assessable in that country.

Claims should be submitted within four years from the last day of the assessment year. To illustrate, if the income arose in the year ended 31-3-64 (assessable in the year 1964-65), the claim must be submitted within 31-3-69. The period has been reduced in the assessment year 1968-69 in terms of which of the income arise during the year ending 31-3-65 (assessable in the year 1965-66) the claim must be submitted within 31-3-70. If the income arise during 31-3-66 (assessable in the year 1966-67) the claim must be submitted within 31-3-71. If the income arise during the year ending 31-3-67 (assessable in the year 1967-68) the claim must be submitted with 31-3-72. If the income arise during the year ending 31-3-68 (assessable in the year 1968-69) the claim must be submitted within 31-3-72. If the income arise during the year ending 31-3-69 (assessable in the year 1969-70) the claim must be submitted within 31-3-72. Refund admissible to an assessee may be set off against outstanding demands, if any. Where an assessee is not satisfied with the decision of the Income-tax Officer in disposing of the claim for refund he can appeal to the Appellate Assistant Commissioner.

Illustration 43.

Calculate the amount of refund admissible to Sm. Suruchi Bala Singha, a widow having no child of 51, Deshapran Avenue, Calcutta as per return of her income for the year ended 31st March, 1970.

Return of total income for the year ended 31st March, 1970
Assessment year 1970-71

	Amount of income	Tax deducted at source
Interest on securities	Rs. 10,000	Rs. 2,200
Rupee Dividends	8,000	1,760
Interest on Fixed Deposit etc.	2,000	200
	<hr/> Rs. 20,000	<hr/> Rs. 4,160

ANSWER

Gross Total Income from all sources	Rs. 20,000
Less : Dividends (Section 80L)	1,000
Total Income	<hr/> Rs. 19,000

Income-tax payable on Rs. 19,000 at the rates ruling in the assessment year 1970-71.

Rs. 15,000	Rs. 1,600
4,000 " 23%	920
	<hr/> Rs. 2,520
Less : Marriage Allowance	200
	<hr/> Rs. 2,320

Special surcharge payable for the assessment year 1970-71.
 10% of Rs. 2,320

232

Rs. 2,552

Tax deducted at source	Rs. 4,160
Less : Income-tax & Special surcharge payable	2,552
Net amount refundable	<hr/> Rs. 1,608

Illustration 44.

Find out the amount of refund admissible to Sri Paritosh Pyne (bachelor) from the following return of his total income.

Return of total income for the year ended 31st March, 1970
Assessment year 1970-71.

	Amount of income	Tax deducted at source
Interest on securities	Rs. 2,000	Rs. 440
Income from House properties	1,500	—
Rupee Dividends	4,000	880
	<hr/> Rs. 7,500	<hr/> Rs. 1,320

Life Insurance premium paid Rs. 1,500—Capital value being Rs. 25,000 (without profits).

ANSWER

Gross Total Income from all sources	Rs. 7,500	
Less : Dividends (Section 80L)	<u>1 000</u>	Rs. 6,500
Less : Life Insurance premium 60% of Rs. 1,500		<u>900</u>
Total Income		<u>Rs. 5,600</u>

**Income-tax payable on Rs. 5,600 at the rates
ruling in the Assessment year 1970-71**

Rs. 5,000	Rs. 250	
600 @ 10%	<u>60</u>	
	Rs. 310	
Less : Personal allowance	<u>125</u>	Rs. 185

Special surcharge payable for the Assessment year 1970-71.

10% of Rs. 185 (Rounded off) 19

Tax deducted at source	Rs. 204
Less : Income-tax and Special surcharge payable	<u>Rs. 1,320</u> <u>204</u>
Net amount refundable	<u>Rs. 1,116</u>

CHAPTER XVIII

TAX CREDIT CERTIFICATE

§ 1. For subscribing Equity Shares (Section 280Z)—With effect from the Assessment year 1965-66, arrangements have been made for granting tax credit certificates to individuals or Hindu undivided families in respect of amounts subscribed and paid for equity shares in the following scales :

- (a) on the first Rs. 15,000 of the amount paid in the financial year — at the rate of 5%
- (b) on the next Rs. 10,000 of the amount paid in the financial year — at the rate of 3%
- (c) on the next Rs. 10,000 of the amount paid in the financial year — at the rate of 2%
- (d) on the balance of the amount paid in the financial year NIL

The tax credit certificate for the amount so calculated will be granted for the financial year in which the payment is first made and for each of the three following financial years subject to the condition that the relevant shares are held by the individual or the Hindu undivided family till the end of the respective financial years and proportionately reduced if the whole or part of such shares are sold during any of these three years.

§ 2. For shifting industrial undertaking from urban area (Section 280ZA)—With effect from the Assessment year 1965-66, arrangements have been made for granting tax credit certificates to public companies which shift, with the prior approval of the Central Board of Direct Taxes, their industrial undertakings from an urban area to any other area, and incur any liability for payment of tax on the "Capital Gains" derived by them from the sale of lands and buildings used for the purpose of their business. The amount of the tax credit certificate will be calculated as a proportion of the tax payable on the "Capital Gains". If the investments in land and buildings in the new area including the expenditure on shifting equals or exceeds such "Capital Gains", the tax certificate will be granted for the entire amount of tax payable on the "Capital Gains". If a company transfers the lands or building in the new area within five years to a person other than the Government or a public sector corporation 50% of the tax credit certificate will be taken back from the company.

§ 3. For manufacturing specified articles (Section 280ZB)—With effect from the Assessment year 1965-66, arrangements have been made for granting tax credit certificates to the companies engaged in the manufacture or production of any article mentioned in the First Schedule to the Industries (Development and Regulation) Act, 1951. The benefit is admissible to those companies which are liable to pay for any of the five Assessment years 1966-67 to 1970-71

an aggregate amount of income-tax and surtax in excess of the corresponding amount payable for the "base year", namely the Assessment year 1965-66. The amount of the tax credit certificate will be calculated at 20% of such excess for each of the five years mentioned earlier. In the case of a company which is not liable to pay any tax for the Assessment year 1965-66, but becomes so liable for any but the last of the following five years mentioned earlier, such year will be treated as the "succeeding base year" for that company and the tax credit certificate will be granted for 20% of the excess of the aggregate tax payable for any subsequent assessment year (within the five-year period mentioned earlier) over the aggregate tax of "succeeding base year". The amount of the tax credit certificate for any year will not, however, in any case, exceed 10% of the aggregate tax for that relevant assessment year. The amount of tax credit certificate after adjustment with any income-tax liability will be refunded after 12 months for effecting redemption of debentures or repayment of loans taken by the company from any approved financial institutions.

§ 4. **For exports out of India (Section 280ZC)**—Arrangements have been made for granting tax credit certificate to any person who exports any goods or merchandise out of India after the 28th February, 1965 and receives the sale proceeds thereof in India through recognised foreign exchange channels. The amount of the tax credit certificate will be calculated with reference to the amount of such proceeds at a rate, not exceeding 15% to be specified by the Central Government. The amount of tax credit certificate after adjustment with any income-tax liability will be refunded after 12 months.

§ 5. **For increased production of specified goods (Section 280ZD)**—Arrangements have been made for granting tax credit certificate to any person who manufactures or produces any goods, for an amount calculated with reference to the excess amount of Central Excise Duty payable on such goods in any of the financial years from 1965-66 to 1969-70 over the amount of such duty which is paid on such goods during the "base year". The amount of the certificate will be calculated at a rate, not exceeding 25% of the excess, to be specified by the Central Government. The base year for this purpose is the financial year 1964-65, but in the case of an undertaking which was not in production during 1964-65, it will be any subsequent financial year in which it begins production.

The amount of tax credit certificate after adjustment with any income-tax liability will be refunded after 12 months for effecting redemption of debentures or repayment of loans taken by the company from any approved financial institutions, or for the acquisition of any capital asset in India including the construction of any building.

CHAPTER XIX

ASSESSMENT AND APPEALS

§ 1. **Normal assessment** [Section 143 (1) & (3)]—According to Section 139 (1), a primary obligation has been imposed on every tax-payer whose income is more than the non-taxable amount to submit a return of his total income within the 30th June of the assessment year. Even when the tax-payer receives the income in his representative capacity (as trustee, guardian etc.), he should submit the return within the above time limit. Where however, the total income includes any income from "Business, profession or vocation", the time limit is extended upto six months from the end of the "previous year". To explain, when the "previous year" ends on the 31st January, the return should be submitted within the 31st July of the assessment year, if it ends on the 31st March the return should be submitted within the 30th September of the assessment year. Income-tax Officer are empowered to extend the date of submission of the return upto 3 months without charging any interest (i.e., up to the 30th September and the 31st December) and beyond 3 months on payment of interest at 9% on the amount of tax payable from the end of the 3 months to the date of the submission of the return. To explain suppose the last date of submission of the return was 30th September, 1967 and the return was actually submitted on the 31st October, 1967 and the amount of tax payable on completion of the assessment was Rs. 1,000 the amount of interest payable will be Rs. 7-50.

$$\frac{9 \times \text{Rs. 1,000}}{100 \times 12}$$

The return must be submitted in the prescribed form obtainable from the Income-tax Officer on application. The form of return contains explicit notes for the guidance of the tax-payers who should study such of the notes as are appropriate to their case. The return must be signed by the tax-payer in person or by a person duly authorised to represent the tax-payer legally and in such a way as will bind his principal.

In addition to this statutory obligation regarding submission of the return of income, the Income-tax Authorities are also authorised to issue notice under Section 139 (2) within the relevant assessment year to those persons who are already known to have taxable income, requiring them to submit within 30 days return of their total income of the previous year. Date of submission of a return may be extended on reasonable grounds. But if the date of submission of the return whether fixed originally or on extension falls beyond the 30th September or the 31st December of the assessment year, the usual 9% interest will, however, be chargeable.

If a person has sustained business loss or capital loss in a year and desires that the loss should be carried forward and set off in a subsequent

year, he can submit a return within the time limit or within the date extended by the Income-tax Officer.

For the assessment year 1960-61, relevant for the accounting year ending March, 31, 1960, the petitioner-company filed its return on April 1, 1961, disclosing a loss of Rs. 22,562 which amount did not include unabsorbed depreciation and development rebate for the year. The return, however, showed the figure of unabsorbed depreciation. The department took the view that the return was out of time under Section 22(2A) (old section) of the Income-tax Act, 1922, and rejected it entirely. In a writ petition filed by the petitioner, it was held by the Hon'ble Madras High Court that where an assessee claims to carry over business loss as well as unabsorbed depreciation and development rebate, they have all to be included in one return, though the first part of the claim would fall under Section 22(2A) (old section) and the other part under Section 22(2) (old section) and if the return filed is a composite one under both the sections, though the portion relating to carry forward of loss was related under Section 22(2A) (old section) the other part of the return relating to unabsorbed depreciation and development rebate must be considered by the Officer, in as much as the carry forward of unabsorbed depreciation and development rebate does not fall within the ambit of Section 22(2A) [I. T. R. Vol. 71 (1969), page 260]

If a return has not been submitted within the statutory time limit or in response to a notice issued by the Income-tax Officer under Section 39 (2), it may be submitted at any time before the assessment is finalised but not beyond four years from the last date of the relevant assessment year. The usual 9% interest will, however, be chargeable for the submission of the return. If there is any error or omission in a return submitted, a revised return can be submitted any time before the assessment is finalised, but the assessee cannot escape the penalty for submitting an original false return.

Failure to submit a return in terms of the statutory obligation or in response to the notice issued by the Income-tax Officer under Section 139 (2) will render a tax-payer liable to be assessed *ex-parte* as also to a penalty of 2% of the tax payable for every month during which the default continued but not exceeding 50% of the tax payable. (See Chapter XX § 1)

When the Income-tax Officer is satisfied that a return submitted is correct and complete, he shall assess the income under Section 143 (1) and determine the amount of tax payable on the basis of such return. This method should be adopted only in case of those assesseees who have more or less an unvariable annual income derived from salaries, interest on securities and house properties where the figure shown in the return can be verified from the employer's annual return, certificates of tax deducted at source and municipal registers.

When the Income-tax Officer has reason to believe that the return submitted by the assessee is not correct or complete, he shall serve a notice on him under Section 143 (2) to attend in person or to produce any evidence in support of his return. The income-tax Officer is also empowered under Section 142 (1) to call for any books of accounts or documents as he may require, but he cannot ask an assessee to produce books of accounts relating to a period of more than three years prior to the "accounting year". Moreover, he is not authorised to ask the assessee to prepare accounts which he does not already possess and does not require for his own purpose, all that the Income-tax Officer is authorised for is to call accounts and documents which are believed to be in existence. The Income-tax Officers are also authorised to call for statements of assets and liabilities not included in the books of accounts.

To guard against abuse of power, the law provides that Income-tax Officers in such cases must take the previous approval of the Inspecting Assistant Commissioner.

To comply with the notice referred to, the assessee need not attend in person and may be represented by a lawyer, auditor, income-tax practitioner or by an employee or relative, authorised by him competent to answer questions and whose statement will of course be binding on him. If on production of the necessary evidence the Income-tax Officer is satisfied, he shall make an assessment under Section 143 (3) and determine the amount of tax payable. Failure to produce accounts or documents asked for by the Income-tax Officer, will render an assessee to be assessed *ex-parte*, in addition to his being prosecuted and penalised. (See Chapter XX § 1)

§ 2. Self-assessment (Section 140A)—Where the amount of tax payable on the basis of the return of income is more than Rs. 500, after adjustment of any tax deducted at source or paid in advance during the previous year, the assessee shall pay the balance amount within 30 days of the submission of the return of income. If the assessee fails to pay the tax within time, he shall be liable to a penalty not exceeding 50% of the tax due.

3. *Ex-parte* assessment (Section 144)—Where no return has been submitted within the statutory time limit, the Income-tax Officer should issue a notice under Section 139 (2) to the assessee asking him to file within 30 days a return of his total income. If a return is not submitted in response to the notice under Section 139(2), the Income-tax Officer shall make an *ex-parte* assessment to the best of his judgment. An *ex-parte* assessment can also be made where an assessee has failed to comply with the notices for production of books of accounts under Section 142(1) or with a notice for attendance or production of evidence under Section 143(2).

In completing an assessment under Section 144, the Income-tax Officer must make what he honestly believes to be a fair estimate of the proper amount of assessment and for this purpose he must be able to take into consideration the local knowledge and repute in regard to the assessee's circumstances and his own knowledge of the previous returns and assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate. He must not act dishonestly or vindictively or capriciously because he must exercise his best judgment in the matter.

Although an *ex-parte* assessment is more or less a penal assessment which is invariably in excess of the assessee's actual income, it is intended to prevent the offence being repeated. In case of a registered firm, the Income-tax Officer may even refuse registration or cancel it where already allowed, subject, to an opportunity being given to the assessee to explain his default. The refusal or the cancellation of the registration is, however, subject to appeal to the Appellate Assistant Commissioner.

If, however, the assessee can prove to the satisfaction of the Income-tax Officer within one month of the receipt of the demand notice that he was prevented by sufficient cause from submitting his return of income or that he did not receive the notices issued under Section 142(1) and 143(2) or that he could not comply with the terms of the notices for reasons beyond his control then the Income-tax Officer shall cancel the *ex-parte* assessment and proceed to make a fresh normal assessment. The Income-tax Officer has no option in

the matter and he is bound to cancel the assessment if the assessee can prove that the default was caused unintentionally and owing to circumstances beyond his control.

§ 4. Emergency assessment (Sections 172 & 174 to 176)—Since a notice under Section 139(2) cannot be issued before the close of the fiscal year for the purposes of assessing the income of that year, Commercial Travellers Touring Theatrical Parties, Temporary Resident or persons about to leave India permanently, can escape tax by departing from the country before the close of the year. To provide for such emergencies, Income-tax Officers are authorised under Section 174 to serve a notice on an assessee requiring him to furnish within seven days a return of his estimated total income for the period from the expiry of the last previous year to the probable date of his departure. The rate applicable in respect of these assessments is the rate in force in the financial year in which the assessment is made.

The section contains an exception to the general rule that assessments are made on the income of the previous year. It should be noted, however, that the onus of discovering such assessee and of putting the emergency machinery in motion, is with the Income-tax Authorities.

Section 172 provides for the assessment and collection of tax in case of certain classes of shipping. The procedure is mainly intended to rope in non-resident owners of such vessels from whom the tax would otherwise be irrecoverable. Before departure from any port of India, the master of the ship shall furnish to the Income-tax Officer a statement of the full amount paid or payable to the Master's principal on account of passenger fares and freight on the live-stock and goods shipped at the port since the arrival of the ship thereat. The Income-tax Officer shall thereafter assess the income at 16·67% of the figure furnished. The tax is then levied at the maximum rate applicable on the date of assessment and the ship is not allowed to leave the port until the Collector of Customs is satisfied that the tax has been paid. Any adjustments in respect of the tax paid can, however, be made in the following year in course of a normal assessment.

If it appears that an assessee is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets with an intention of avoiding payment of tax, the Income-tax Officer can make an assessment in terms of Section 175, in respect of the income for the period commencing from the last day of the previous year to the probable date of alienation of the assets.

Section 176 further empowers the Income-tax Officer to make an emergency assessment when a business, profession or vocation is discontinued in respect of the income from the last day of the previous year to the date of discontinuance. Any person discontinuing any business, profession or vocation should, however, give notice to the Income-tax Officer within 15 days of such discontinuance.

§ 5. Provisional assessment (Section 141)—To speed up collection of revenue, Income-tax Officers are empowered to make provisional assessments on the basis of the assessee's own return of income accompanied by accounts and documents, if any, in support thereof. In selecting cases for making provisional assessment, priority was, therefore, given to old cases in which the net amounts payable were substantial. If on the basis of the return of income and the accounts submitted by an assessee, the Income-tax Officer finds that there will actually be a net demand payable, then the provisional assessment is made. No appeal lies

against a provisional assessment. Without prejudicing the merits of any issue involved, the amount of tax paid on provisional assessment is adjustable in the regular assessment, the difference being payable by or refundable to the assessee.

The scheme of Section 141 is to call upon the assessee to pay tax provisionally at the appropriate rate on what he admits is his taxable income, subject to the benefit of the allowances under sub-section (2). The section does not permit any enquiry to be made whether the total income returned by the assessee exceeds the amount admitted by him, not whether the allowances or deductions claimed are admissible. If there be a discrepancy between the return made and the accounts and documents accompanying the return, the Income-tax Officer may ask the assessee to explain the discrepancy, but he must make a provisional assessment on the basis of the return initially made or clarified and the accounts and documents filed. He can not make a provisional assessment by holding that certain claims made by the assessee are in law unjustified [I.T.R. Vol. 71 (1969), page 800] [Supreme Court decision].

In the assessment year 1968-69 a provision was made for granting refunds on the basis of the return of income and accounts and documents accompanying if the assessee can prove that the advance tax paid by him and the tax deducted at source exceed the tax payable on the basis of such return, accounts and documents. If it is found on regular assessment that the amount of refund allowed to the assessee is in excess of the amount due to him such excess shall be recoverable from him. (Section 141A)

§ 6 Income escaping assessment (Section 147)—Under certain circumstances, Income-tax Officers are empowered to reopen an assessment if they are of the opinion that the income has escaped assessment. The section covers four alternatives: (i) where the income was not disclosed in the return; (ii) where the income has been under-assessed owing to mistakes in computation including wrong allowances and so forth; (iii) where the income has been assessed at a lower rate of tax than is appropriate; and (iv) where the income has been the subject of excessive refunds or relief.

The intention of the Income-tax Officer must properly be notified to the assessee before any action is taken. If it appears at any stage of the proceedings that no income has escaped assessment or has been assessed at a lower rate the Income-tax Officer must promptly stop the proceedings. It is not intended that when an assessee has concealed part of his income and the Income-tax Officer is proceeding to re-assess the income, the assessee should be entitled to have any benefit out of that re-assessment. Still less it is intended that the Income-tax Officer should be invested with wide powers of revision or review merely because he has caused a mistaken impression that certain income has escaped assessment or has been assessed at a lower rate. His powers under Section 147 can never be used, therefore, to effect a reduction of tax already levied upon the assessee.

The rate of tax chargeable in respect of re-assessment must be levied at the rate at which it would have been levied had the income not escaped assessment. To illustrate, if the income of the accounting period ended 31-3-65 (assessable in the year 1965-66) which has escaped assessment, be re-assessed in the assessment year, say 1967-68, then the tax chargeable on that total re-assessed income should be calculated at the rates levied in the Assessment year 1965-66 and not at the rates of the year 1967-68.

§ 7. Place of assessment (Section 124).—With a network of income-tax Officers scattered throughout India, it is but logical that there must be some hard and fast method to map out their individual jurisdictions. Ordinarily, an Income-tax Officer is empowered to assess any income, profits or gains accruing, arising or received within a certain territorial jurisdiction. Consequently, an assessee has to be assessed by the Income-tax Officer of the Area within which he ordinarily resides, but if he carries on a business, the assessment should be made by the Officer of the Area within which his principal place of business is situated. If there be any dispute regarding jurisdiction of the Income-Officer, the matter should be settled by the State Commissioner of Income-tax. Where the areas are situated in more than one State, the matter should be settled by the Central Board of Direct Taxes if the State Commissioners are not in agreement. In all cases of dispute, however, the assessee should be given an opportunity of representing his views although these are not necessarily accepted. Under special circumstances, the Income-tax Officers appointed not in relation to the territorial jurisdiction but in relation to certain classes of assessee or certain classes of income. A list of the areas or classes of person comprised in each Officer's jurisdiction is displayed on the notice board in the office of the Income-tax Officer concerned and if any person is in doubt as regards the Officer to whom he should submit his return of income, he may enquire from the nearest Income-tax Officer or from the State Commissioner of Income-tax.

The form of return requires an assessee to state his principal place of business and if he has made a statement, he should obviously be bound by it. Where, however, he defaults in submitting a return of his income even though asked to do so under Section 139(2), he is deprived of the right to raise any question about the jurisdiction of the assessing Income-tax Officer.

§ 8. Appeals (Section 246).—It is an established rule of law that there cannot be an inherent right of appeal and that the right of appeal must expressly be given by the Statute. Section 246 of the Income-tax Act specifically provides for the right of appeal under certain circumstances and we shall now deal with them.

(a) **Appeal to Appellate Assistant Commissioner.**—Where an assessee denies his liability to be assessed under the Act, he can appeal to the Appellate Assistant Commissioner. Mere filing one's return of income cannot by itself be taken to be an indication of his consent to the assessment, as such the assessee has an unqualified right to appeal whether he had questioned his liability to assessment under the Act before the Income tax Officer or not.

All assessment whether normal or *ex-parte* are subject to appeal. If the assessee is of the opinion that the amount of his total income has wrongly been computed by the Income-tax Officer, or that the amount of tax payable in relation to his total income has wrongly been calculated, he can appeal to the Appellate Assistant Commissioner. Where an *ex-parte* assessment has been re-opened under Section 146 and the assessee is not still satisfied, he can appeal against the re-opened assessment.

An appeal shall ordinarily be presented within 30 days of the receipt of the demand notice relating to the assessment or penalty objected to or of the intimation of the refusal of the Income-tax Officer, as the case may be. The Appellate Assistant Commissioner has the discretionary power to extend the period of limitation on reasonable grounds. The appeal must be filed in the prescribed form available from the Income-tax Officer and shall be verified

in the prescribed manner. Any false statement made in the verification clause is an offence punishable under Section 277 of the Income-tax Act.

(b) **Hearing of Appeals by Appellate Assistant Commissioner (Sections 250 & 251)**—On receipt of the appeal, the Appellate Assistant Commissioner shall fix a date and place for hearing and shall send the notice to the assessee asking for any evidence he may desire. Adjournment can of course be given at his discretion on reasonable grounds. An appeal should not be dismissed for default of appearance but should always be decided upon merits. The Assistant Commissioner has the authority to make any enquiry he thinks necessary or to have such enquiries made by the Income-tax Officer. He has also the authority to admit additional grounds of appeal provided the omission was not wilful or unreasonable.

In the case of an appeal against an order of assessment, the Assistant Commissioner may confirm, reduce, enhance, annual or set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such enquiries as the Income-tax Officer may consider necessary or the Assistant Commissioner may direct.

Although the Assistant Commissioner has the power to enhance an assessment or penalty, he cannot exercise it without giving a reasonable opportunity to the assessee to explain his position. This power of enhancement does not authorise the Assistant Commissioner to go beyond the subject matter of the assessment and assess entirely new sources of income which were not the subject matter of the assessment appealed against. In dealing with an appeal against an assessment under Section 147, the Assistant Commissioner can only deal with that part of the income which had escaped assessment at the original assessment or with an enhancement of rate of tax at the re-assessment. He cannot entertain any argument that involves any reduction of the amount determined at the original assessment.

As the Appellate Assistant Commissioner now performs quasi-judicial functions, the Income-tax Officer is authorised to be represented at the time an appeal is heard. On conclusion of the Appeal, the Appellate Assistant Commissioner shall communicate his orders to the assessee and also to the Commissioner of Income-tax.

(c) **Appeals to the Appellate Tribunal (Section 253)**—An assessee can lodge an appeal to the Appellate Tribunal within 60 days of the date on which an order by the Appellate Assistant Commissioner under Section 250 is communicated to him. The department is also authorised to lodge an appeal to the Appellate Tribunal against any order passed by the Appellate Assistant Commissioner. The Appellate Tribunal is empowered to admit an appeal out of time if there is sufficient cause for the delay. The appeal must be filed in the prescribed form with a fee of Rs. 100. The department is, however, exempted from paying this fee. After hearing both parties, the Appellate Tribunal shall pass an order as it thinks fit and shall communicate its decision to the assessee as well as to the Commissioner. Order passed by the Appellate Tribunal shall be final and conclusive unless any question of law arises out of such order.

Section 254 of the Income-tax Act, 1961 which confers on the Appellate Tribunal powers of the widest amplitude in dealing with appeals before it, grants by implication the power of doing all such acts, or employing such means, as are essentially necessary to its execution. The statutory power under Section 254

carries with it the duty in proper cases to make such orders for staying recovery proceedings pending an appeal before the Tribunal, as will prevent the appeal, if successful, from being rendered nugatory. [I.T.R. Vol. 71 (1969), page 815]. [Supreme Court decision].

* (d) **Appeals to the High Court (Section 256)**—Should the assessee or the Commissioner be not satisfied with the decision of the Appellate Tribunal, either of them may require the Tribunal to refer the matter to the High Court. But no reference can be made to the High Court on question of fact to which case the decision of the Tribunal is final and conclusive. The application for reference to the High Court should be made within 60 days of the date on which the decision of the Tribunal has been communicated. It must be made in the prescribed form accompanied by a fee of Rs. 100. The department is, however, exempted from making this deposit. If the tribunal is of the opinion that a question of law arises out of its order, then it shall within 90 days of the receipt of the application draw up a statement of the case and refer it to the High Court. If, on the other hand, the Tribunal consider that a point of law is not involved, then it may refuse to state the case. Where a reference is withheld on this ground, the applicant may apply to the High Court direct within six months from the date on which he is served with the notice of refusal to make a reference for 'mandamus' requiring the Tribunal to state a case. Where such an order has been passed by the High Court, the Tribunal must state a case. These reference shall be heard by a Bench of not less than two Judges and a copy of the judgment under the Seal of the Court and the signature of the Registrar should be sent to the Appellate Tribunal for disposal in the light of the orders passed by the Court. Costs will be decided at the discretion of the Court. Where as a result of the reference, refund is due to the assessee, it should be granted along with any interest the Commissioner may allow unless he decides to appeal to the Supreme Court and intimates the Court of his intention to ask for leave to this effect within 30 days of receipt of the Court's order. The refund may then be stayed with the Court's permission until such time as the appeal to the Supreme Court is disposed of.

(e) **Appeals to the Supreme Court (Section 261)**—An appeal shall lie to the Supreme Court from any judgment of the High Court if the High Court certifies that the question of law involved is one of great importance. Usually the High Court will certify a case where the correct interpretation of the law will benefit not only the parties to the proceedings but also other person similarly situated. Effect shall be given to the order of the Supreme Court where the judgment of the High Court is varied or reversed with the result that the Commissioner would no longer be able to withhold a refund under any circumstances. The decision of the Supreme Court shall be final and conclusive.

§ 9. **Revisionary power of the Commissioner of Income-tax (Sections 263 & 264)**—The Commissioner of Income-tax as administrative head of the department in his State is authorised to call for the file of any assessee and revise at his discretion, any order passed by an authority subordinate to him. But he shall not pass an order prejudicial to the assessee. The Commissioner shall not also revise any order which is subject to an appeal to the Appellate Authorities or which has been made more than one year ago

The assessee can also ask the Commissioner to revise an order passed by an authority subordinate to him. With a view to discourage frivolous applications, a fee of Rs. 25 has been prescribed. On receipt of the application, the Commis-

sioner shall call for the records and pass orders as he thinks fit. But he shall not revise any order which is subject to an appeal to the Appellate Authorities. As the Commissioner has expressly been prohibited from making an order prejudicial to the assessee, his decision shall be final and conclusive. No appeal or reference shall lie from his orders.

Section 263 empowers the Commissioner to revise within two years any order of the Income-tax Officer which is prejudicial to the Revenue. The assessee has, however, been given the right of appeal to the Appellate Tribunal against the Commissioner's order of revision in exactly the same manner as he has the right of appeal against the Appellate Assistant Commissioner's order.

CHAPTER XX

PENALTY AND PROSECUTION

The Income-tax Act has imposed certain obligations on the assessee, non-compliance of which will render them liable to be penalised and prosecuted. Under certain circumstances, the Department is authorised to levy a penalty while in other cases fines and penalties can be levied by a Magistrate in the event of a prosecution being launched.

§ 1. Penalties leviable by the Department (Section 271)—Section 139(1) imposes a statutory obligation on all tax-payers whose income is more than the non-taxable amount to submit returns of their total income, non-compliance of which is punishable with a penalty equal to 2% of the tax for every month during which the default continued with a maximum of 50% of the tax payable on the total income of the offender.

Section 140A imposes a statutory obligation on all assessee who have submitted their returns of income to pay the amount of tax due on the basis of such returns which is in excess of Rs. 500 after adjustment of tax deducted at source or paid in advance in the accounting period. Failure to pay the amount within 30 days of the submission of return is punishable with a penalty of 50% of the amount of tax due.

Failure to submit a return of income in response to a notice under Sections 139(2) or 148 is punishable with a penalty equal to 2% of the tax for every month during which the default continued with a maximum of 50% of the tax payable on the total income of the offender.

Failure to produce books of accounts called for by the Income-tax Officer under Section 142 (1) or to furnish evidence asked for by the Income-tax Officer under Section 143 (2) is punishable with a penalty equal to a minimum of 10% of the tax which would have been avoided if the income returned by the offender has been accepted as correct. The maximum amount is, however, restricted to 50% of the tax.

Concealment of income or deliberate mis-statement of actual income in the return submitted is punishable with a penalty equal to a minimum of the income which would have been avoided if the income returned by the offender had been accepted as correct. The maximum amount is, however, restricted to twice the amount concealed. It should be noted in this connection that the correction of return or the submission of a fresh return before the date of final assessment does not condone a deliberate omission or wilful mis-statement made in the original return.

Improper distribution of the profits of a registered firm with the object of returning the income of a partner below the real amount, is punishable with a maximum penalty of one and half times the income-tax which would have been avoided had the returns of income submitted by the partners been accepted.

Assessment proceedings are taxing proceedings and penalty proceedings are criminal proceedings in their very nature ; a decision or finding arrived at in the assessment proceedings is not binding on the authority who tries the assessment for an offence. It is perfectly open to the Authorities in the penalty proceedings to consider the finding arrived at in the assessment proceedings that a particular receipt constituted an income for a particular assessment year, but they are not bound by that finding and where any other evidence is produced in the penalty proceedings, it is open for them to come to a different conclusion. [I. F. R., Vol. 34 (1958), page 98] [Bombay High Court decision]

Proceedings under Section 28 (old section) of the Income-tax Act, 1922, are penal in character. The gist of the offence under Section 28(1)(c) (old section) is that the assessee has concealed the particulars of such income and the burden is on the department to establish that the receipt of the amount in dispute constitutes income of the assessee. If there is no evidence on the record except the explanation given by the assessee, which explanation has been found to be false, it does not follow that the receipt constitutes his taxable income. It would be perfectly legitimate to say that the mere fact that the explanation of the assessee is false does not necessarily give rise to the inference that the disputed amount represents income. It cannot be said that the finding given in the assessment proceedings for determining or computing the tax is conclusive. However, it is good evidence. Before penalty can be imposed the entirety of circumstances must reasonably point to the conclusion that the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars.

While making an assessment on the respondent (Anwar Ali) for the assessment year 1947-48, the Income-tax officer discovered an undisclosed bank account of the respondent in which a cash deposit of Rs. 87,000 had been made. According to the respondent's explanation that sum represented diverse amounts entrusted to him by his relatives who had got panicky during the communal riots in Bihar in 1946. The Income-tax Officer rejected the explanation and brought the sum of Rs. 87,000 to tax as his income from undisclosed sources. Thereafter, penalty of Rs. 66,000 was imposed on the respondent under Section 28(1)(c) (old section) of the Income-tax Act, 1922, for concealment of particulars of his income. On appeal the Tribunal held that no penalty could be imposed on the ground that onus lay upon the department to show by adequate evidence that the amount of cash was of a revenue nature and that the respondent had concealed it and that that onus was not discharged by showing merely that respondent's explanation was found to be unacceptable: the Income-tax Officer had to find some material apart from the falsity of the respondent's explanation to support his finding that the receipt from undisclosed sources was income. On a reference, the High Court held that the income-tax authorities were not justified in imposing a penalty under Section 28(1)(c) (old section). On appeal to the Supreme Court, it was held affirming the decision of the High Court, that in the absence of cogent material evidence, apart from the falsity of the respondent's explanation, from which it could be inferred that

the respondent had concealed the particulars of his income or had deliberately furnished inaccurate particulars in respect of the source and that the disputed amount was a revenue receipt, the penalty could not be imposed. [I.T.R., Vol. 76 (1970) page 696].

Penalties are always leviable in addition to the income-tax normally payable by the offender. When a penalty has been imposed under Section 271, a notice of demand should be served on the assessee under Section 156 and if he is not satisfied, he can appeal within 30 days of the receipt of the demand notice to the Appellate Assistant Commissioner.

In all cases of penalty proceedings (imposing penalties exceeding Rs. 1,000) under Section 271 (1) (c) (iii), the Income-tax Officer must have the previous approval of the Inspecting Assistant Commissioner. Moreover, no order shall be passed unless the assessee or the partner has been given a reasonable opportunity of explaining his position. No prosecution can be institute in respect of the same facts on which a penalty has been imposed.

Section 272 imposes a statutory obligation on persons discontinuing business, profession or vocation to give notice of such discontinuance within 15 days thereof. Non-compliance of which is punishable with a maximum penalty of a sum equal and in addition, to the income-tax finally levied.

Section 177 enacts that where any business, profession or vocation carried on by a firm or an association of persons has been discontinued or dissolved, each partner or member is liable jointly and severally for the tax assessed in addition, to his personal assessment, if any.

Section 94 empowers the Income-tax Officers to call for certain particulars to examine whether any tax has been avoided by sale of securities and shares with the option of re-buying them. Failure to comply with any of these requisitions will render the assessee liable under Section 270 to an initial penalty up to Rs. 500 plus a further penalty of the like amount for every day of the default after the imposition of the initial penalty.

Section 221 empowers the Income-tax Officers to impose a penalty where the tax demanded has not been paid within the prescribed time and in the case of continuous default the penalty may be enhanced from time to time up to the amount of arrear demand.

§ 2. Penalties leviable on prosecution before a Magistrate (Sections 276 to 279)—The following offences are punishable on conviction with a fine of Rs. 10 per day of default—

(1) Failure to grant inspection or to allow copies to be taken from registers maintained for share-holders, debenture-holders, etc. of a company (Section 134).

(2) Failure to furnish in due time the following returns—

(a) Return of the names and addresses of the partners of a firm and their respective shares, or the members of a Hindu undivided family; or of the beneficiaries of a trustee, guardian etc. [Section 133 (1), (2) & (3)];

(b) Return of the persons, to whom rent, interest, commission, royalty, brokerage or annuity of more than Rs. 400 has been paid [Section 133(4)];

(c) Return of the names and addresses of the persons on whose behalf any dealer, broker, or agent has sold or bought in a Stock or Commodity Exchange [Section 133 (5)] ;

(d) Return of total income in compliance with the special notice issued under Section 139 (2) ;

(e) Return of employees to whom salary of more than Rs. 3,400 has been paid and the amount of tax deducted in respect thereof (Section 206—Due date 30th April each year) ;

(f) Return of persons to whom dividends of more than Rs. 5,000 has been paid (Section 285—Due date 15th June each year) ;

(g) Return of persons to whom interest of more than Rs. 400 has been paid (Section 286—Due date 15th June each year).

(3) Failure to produce books of accounts or documents asked for by the Income-tax Officer under Section 142 (1).

(4) Failure to deduct and pay tax as required by the provisions of Chapter XVII-B (Sections 192 to 206).

(5) Failure to deduct and pay arrear of tax from salary asked for by the Income-tax Officer under Section 226 (2).

(6) Failure to furnish certificates of deduction of tax in respect of salary. Interest on securities, dividends etc. as required by Section 203.

Deliberate mis-statement in any verification clause of any of the forms prescribed under the Act or rules made thereunder is punishable on conviction with simple imprisonment which may extend to six months or with a fine upto Rs. 1,000 or with both. Any person who abets or induces any other person in any manner to make and deliver false account, statement, or declaration is also punishable on conviction with simple imprisonment which may extend to six months or with a fine upto Rs. 1,000 or with both.

No prosecution can be instituted for any of the above offences without the approval of the inspecting Assistant Commissioner who is also empowered to compound such offences even after prosecution has been launched.

§ 3. Judicial Proceedings [Sections 131, 132 and 255 (6)]—Although Section 288 permits an assessee to be represented by an authorised representative, it does not exempt him from being summoned by the Income-tax Authorities if they consider the assessee's personal attendance necessary. The Income-tax Officer, Appellate Assistant Commissioner, Commissioner and the Appellate Tribunal have been empowered—(1) to enforce the attendance of any person (including any Officer of a Banking Company) and examine him on oath or affirmation ; (2) to compel the production of documents ; (3) to issue commissions for examination of witnesses. These proceedings shall be deemed to be "judicial proceedings" as covered by Sections 193, 196 and 228 of the Indian Penal Code. The penalties for disobeying the summons issued under the Income-tax Act are the same as those for disobeying the summons issued by a Civil Court. In addition, the Income-tax Authorities can impose a fine not exceeding Rs. 5,000. The relevant sections of the Indian Penal Code are as follows—

193. Whoever intentionally gives false evidence, in any state of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding shall be punished with imprisonment of either description a term which may extend to seven years and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine

196. Whoever corruptly uses or attempts to use as true or genuine evidence, any evidence, which he knows to be false or fabricated shall be punished in the same manner as if he gave or fabricated false evidence

228. Whoever intentionally offers any insult or causes any interruption to any public servant while such public servant is sitting in any stage of judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both

The Income tax Officer can also impound and retain in his possession any books of accounts or other documents produced before him. To guard against abuse of power the law provides that if the Income-tax Officer desires to retain the books for more than 15 days, then he must obtain prior approval of the Commissioner. The Income-tax Officer must, however in all cases record in writing his reason for retaining the books to enable the assessee to approach higher authorities for redress, if they so desire

Additional powers have been granted to the Income-tax Officer to enter and search any place of business, to seize any books of accounts or documents, to place mark of identification on any such books of accounts and to make an inventory of anything found in the course of search which will be useful for any proceedings under the Act

Since by the exercise of the power under Section 132 of the Income-tax Act, 1961 a serious invasion is made upon the rights, privacy and freedom of the taxpayer, the power must be exercised strictly in accordance with the law and only for the purposes for which the law authorises it to be exercised. If the action of the officer issuing the authorisation or of the designated officer is challenged, the officer concerned must satisfy the court about the regularity of his action. If the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by the court. If the conditions for the exercise of the power are not satisfied the proceeding is liable to be quashed. But where power is exercised *bonafide*, and in furtherance of the statutory duties of the officers, any error of judgment on the part of the officers will not vitiate the exercise of the power. Where the Commissioner entertains the requisite belief and for reasons recorded by him authorises a designated officer to enter and search premises for books of account and documents relevant to or useful for any proceeding under the Act, the court, in a petition by an aggrieved person, cannot be asked to substitute its own opinion whether an order authorising search should have been issued. Any irregularity in the course of entry, search and seizure committed by an officer acting in pursuance of the authorisation will not be sufficient to vitiate the action taken provided the officer has, in executing the authorisation, acted *bonafide*. [I.T.R. Vol. 74 (1969), page 836] [Supreme Court decision].

§ 4. Disclosure of information by the Income-tax Authorities (Sections 138 & 280)—Income-tax returns and statements are confidential as between the assessee and the Income-tax Department, the breach of which is punishable with imprisonment up to six months and a fine at the discretion of the court. The intention is to encourage the assessee to make a full and true disclosure of all relevant facts within his knowledge, knowing that any statement made by him will not subsequently be used against him. But the particulars may be disclosed to such persons only who act in the execution of the Act itself, as also under certain circumstances provided in the sections. No prosecution shall, however, be instituted without the previous approval of the Commissioner.

CHAPTER XXI

COLLECTION AND RECOVERY OF TAX

§ 1. Deduction of tax at source :

(a) **Salary (Section 192)** Any person responsible for paying "Salaries" shall at the time of payment deduct income-tax on the amount payable at the average rate applicable to the estimated total annual income of the assessee under this head. (For detailed discussion refer to **Chapter VII § 6**)

(b) **Interest on Securities (Section 193)** Any person responsible for paying any income chargeable as "Interest on securities" shall deduct income-tax at prescribed rates at the time of payment of such interest. (For detailed discussion refer to **Chapter VIII § 4**)

(c) **Dividends (Section 194)** The principal officer of a company which has made prescribed arrangements for payment of dividend in India shall deduct income-tax at the prescribed rates at the time of payment of such dividend. (For detailed discussion refer to **Chapter XII § 2**)

(d) **Interest excluding "interest on securities" (Section 194A)**—Partnership Firms, Association of persons, Companies and other corporate organisations which pay to a "resident" any interest (excluding interest on securities) shall deduct income-tax at the time of credit of such interest or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode. The deduction shall be made in respect of payments effected after 1st October 1967 at 10% per rupee in the case of an individual and 20% in the case of a company. The deduction shall not be made in the following cases—

- (1) If the amount paid or credited after 1st October 1967 at any one time does not exceed Rs 400
- (2) If the payment is effected to any Banking Company, Co-operative Society, Financial Corporation, Life Insurance Corporation, Unit Trust of India and similar organisations excluded by the Central Government
- (3) If the recipient (other than a company or a Registered Firm) furnish an affidavit or a statement in writing declaring that his estimated total income assessable for the assessment year next following the financial year in which the interest is credited or paid will be less than the minimum liable to income-tax. The statement shall bear an attestation by a "Gazetted Officer" to the effect that the person who has signed the statement is known to him

(e) **Other Sums (Section 195)**—Any person responsible for payment to non-residents of any interest, rent, brokerage commission or any other sum chargeable to Indian Income-tax, shall deduct income-tax at the prescribed rates at the time of payment of such sum. (For detailed discussion refer to **Chapter XXII § 5**)

§ 2. Rates for deduction of tax at source :

The rates for the accounting year 1st April 1969 to 31st March 1970 (Assessment year 1970-71) and 1st April 1970 to 31st March 1971 (Assessment year 1971-72) are as follows—

	Rate of Income-tax	Rate of Surcharge
1. In the case of a person other than a company—		
(a) where the person is resident—		
(i) on income by way of interest other than “interest on securities”	10 per cent	Nil
(ii) on any other income (excluding interest payable on a tax-free security)	20 per cent	2 per cent
(b) where the person is not resident in India—		
(i) on the whole income (excluding interest payable on a tax-free security).	Income-tax at 30 per cent and surcharge at 3 per cent of the amount of the income or income-tax and surcharge on income-tax in respect of the income at the rates prescribed in Paragraph A of Part III of this Schedule, if such income had been the total income, whichever is higher ;	
(ii) On the income by way of interest payable on a tax-free security.	15 per cent	1·5 per cent
2. In the case of a company—		
(a) where the company is a domestic company—		
(i) on income by way of interest other than “interest on securities”	20 per cent	Nil
(ii) on any other income (excluding interest payable on a tax-free security)	22 per cent	Nil
(b) where the company is not a domestic company—		
(i) on the income by way of dividends payable by an Indian company as is referred to in clause (a) (i) of subsection (1) of Section 80M of the Income-tax Act.	14 per cent	Nil
(ii) on the income by way of dividends payable by any domestic company other than a company referred to in (i) hereinabove.	24·5 per cent	Nil

	Rate of Income-tax	Rate of Surcharge
(iii) on the income by way of royalties payable by an Indian concern in pursuance of an agreement made by it with the Indian concern after the 31st day of March, 1961, and which has been approved by the Central Government.	50 per cent	Nil
(iv) on the income by way of fees payable by an Indian concern for rendering technical services in pursuance of an agreement made by it with the Indian concern after the 29th day of February, 1964, and which has been approved by the Central Government.	50 per cent	Nil
(v) on the income by way of interest payable on a tax-free security	44 per cent	Nil
(vi) on any other income	70 per cent	Nil

“Domestic company” [Section 80B (2)] means an Indian company or any other non-Indian company which, in respect of its income is liable to income-tax under the Income-tax Act, 1961 for the assessment year commencing on the 1st day of April, 1966 onwards, has made the prescribed arrangements for the declaration and payment within India of the dividends payable out of such income in accordance with the provisions of Section 194 of that Act.

§ 3. **Advance payment of Tax (Section 207 to 219)**—If the last assessed total income of an assessee exceed the maximum non-taxable income by Rs. 2,500 [i.e., for the Assessment year 1968-69 Rs. 6,500 for an individual and Rs. 9,500 for a Hindu undivided family having at least 2 male members of more than 18 years old (neither of whom is a lineal descendent of the other)] and include any income other than salary, interest on securities and dividends, then he will be liable to pay quarterly (1st June, 1st September, 1st December and 1st March) income-tax in respect of the “untaxed income”. If the “previous year” ends between the 1st January and the 30th April of any year, the advance tax will be payable in three instalments instead of four and the dates will be 1st September, 1st December and 15th March following the “previous year”. The tax shall be calculated proportionately at the rates in force in the financial year in which the assessee is required to pay. The year in respect of which the tax is to be paid is his own “previous year” for the next year’s assessment. Thus if his year ends on the 31st December, he shall pay the tax in advance during 1967-68 on the basis of his last assessed total income and when the assessment for 1968-69 in respect of his income for the year ended 31st December, 1967 is made, he will be credited with the advance tax paid during 1967-68. If any of the sources of income in respect of which the advance payment is demanded by the Department ceases or if the assessee estimates a reduced income from any of those “untaxed sources” then he is at liberty to estimate his own total income for the year and pay tax on that basis. But if his estimate falls short of 75% of tax determined on regular assessment, he will be liable to pay a penal interest at 9% per annum on the difference from the first day of January of the financial year in which the tax is paid to the date of regular assessment. No penal

interest is, however, payable where the assessee chooses to pay on the basis of his last assessed income even if the tax determined on regular assessment is much greater.

With effect from 1st April, 1969 the basis of payment of advance tax was radically altered. From 1st April, 1969 advance tax is not payable if the total income does not exceed the following limits—

(a) In the case of a Company or a local authority	Rs. 2,500
(b) In the case of a Registered Firm	30,000
(c) In the case of a non-resident individual (male or female)	5,000
(d) In the case of all other assesseees	10,000

In addition, the amount of advance tax calculated on the total income should be reduced by the full amount of tax deductible at source on the gross income under the heads salary, interest on securities, dividends etc. The amount of advance tax thus calculated should be paid in three instalments (15th June, 15th September and 15th December) if the "previous year" ends before 31st December and in all other cases the due dates will be 15th September, 15th December and 15th March.

Advance tax payable by a Resident Individual—married having more than one dependent child— during the period 1.4.70 to 31.3.71 (Assessment year 1971-72) should be calculated on the basis of last completed assessment as follows—

Business income for the year ended 31st March, 1970		Rs. 16,000
Gross interest on securities received during the year ended 31st March, 1970	Rs. 5,000	
Less : Interest paid on borrowings	2,000	3,000
Gross Rupee dividends	Rs. 2,000	1,000
Less : Exempted (Section 80L)	1,000	
Total Income		Rs. 20,000
Income-tax payable on total income of Rs. 20,000 (as per page 239)		Rs. 2,500
Surcharge @ 10% of Rs. 2,500		250
		Rs. 2,750
Less : Income-tax deductible on gross interest on Securities Rs. 5,000 and gross dividends Rs. 2,000 i.e. Rs. 7,000 @ 22%		1,540
Net advance tax payable		Rs. 1,210

The amount is payable in 3 equal instalments on the 15th September 1970, 15th December 1970 and 15th March, 1971.

Paragraph A

In the case of every individual or Hindu undivided Family or unregistered firm or other associations of persons or body or individuals whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of Section 2 of the Income-tax Act, 1961.

The rates at which the tax should be paid in advance during 1st April 1969 to 31st March 1970 (Assessment year 1970-71) are as follows—

Rates of income-tax.

- | | |
|--|--|
| (1) Where the total income does not exceed Rs. 5,000. | 5 per cent of the total income ; |
| (2) Where the total income exceeds Rs. 5,000 but does not exceed Rs. 10,000. | Rs. 250 plus 10 per cent of the amount by which the total income exceeds Rs. 5,000 ; |
| (3) Where the total income exceeds Rs. 10,000 but does not exceed Rs. 15,000. | Rs. 750 plus 17 per cent of the amount by which the total income exceeds Rs. 10,000 ; |
| (4) Where the total income exceeds Rs. 15,000 but does not exceed Rs. 20,000. | Rs. 1,600 plus 23 per cent of the amount by which the total income exceeds Rs. 15,000 ; |
| (5) Where the total income exceeds Rs. 20,000 but does not exceed Rs. 25,000. | Rs. 2,750 plus 30 per cent of the amount by which the total income exceeds Rs. 20,000 ; |
| (6) Where the total income exceeds Rs. 25,000 but does not exceed Rs. 30,000. | Rs. 4,250 plus 40 per cent of the amount by which the total income exceeds Rs. 25,000 ; |
| (7) Where the total income exceeds Rs. 30,000 but does not exceed Rs. 50,000. | Rs. 6,250 plus 50 per cent of the amount by which the total income exceeds Rs. 30,000 ; |
| (8) Where the total income exceeds Rs. 50,000 but does not exceed Rs. 70,000. | Rs. 16,250 plus 60 per cent of the amount by which the total income exceeds Rs. 50,000 ; |
| (9) Where the total income exceeds Rs. 70,000 but does not exceed Rs. 1,00,000. | Rs. 28,250 plus 65 per cent of the amount by which the total income exceeds Rs. 70,000 ; |
| (10) Where the total income exceeds Rs. 1,00,000 but does not exceed Rs. 2,50,000. | Rs. 47,750 plus 70 per cent of the amount by which the total income exceeds Rs. 1,00,000 ; |
| (11) Where the total income exceeds Rs. 2,50,000. | Rs. 1,52,750 plus 75 per cent of the amount by which the total income exceeds Rs. 2,50,000 ; |

Provided that in the case of a person not being a non-resident individual (male or female) the amount of income-tax computed at the rates hereinbefore specified shall be reduced by—

- (a) Rs. 125 in the case of an unmarried individual (male or female).
- (b) Rs. 200 in the case of a married individual (male or female) who has no child.
- (c) Rs. 220 in the case of a married individual (male or female) who has one child mainly dependent on him or her.
- (d) Rs. 240 in the case of a married individual (male or female) who has more than one child mainly dependent on him or her.

In the case of a married individual (male or female) whose spouse has a total income exceeding Rs. 4,000, the amounts of Rs. 200, Rs. 220 and Rs. 240 should, however be reduced to Rs. 125, Rs. 145 and Rs. 165 respectively.

No income-tax is deductible on a total income which is less than Rs. 4000. To explain if the total income for the year ending 31st March, 1970 (Assessment year 1970-71) is Rs. 3,900 income-tax deductible shall be NIL, although income-tax on Rs. 3,900 @ 5% is Rs. 195 less personal allowance of Rs. 125 will be Rs. 70 in the case of an unmarried individual (male or female).

In addition, income-tax deductible shall not exceed 40% of the amount by which the total income exceeds Rs. 4,000. To explain, if the total income of an unmarried individual assessee (male or female) is Rs. 4,050 the amount of income-tax deductible on Rs. 4,050 @ 5% i.e. Rs. 202.50 less personal allowance of Rs. 125 will be Rs. 77.50, but the amount shall be restricted to 40% of Rs. 50 i.e. Rs. 20.

In addition to spouse and children allowance dependent parents and grandparents (having annual income of less than Rs. 1,000) allowance shall be allowed at the rate of Rs. 20 if the total income of the individual (male or female) is less than Rs. 10,000. To explain, if the total income of the individual (male or female) is less than Rs. 10,000 then in calculating the amount of income-tax the following amounts shall be deducted—

- (a) Rs. 125 plus Rs. 20 i.e. Rs. 145 for an unmarried individual (male or female) having dependent parents.
- (b) Rs. 200 plus Rs. 20 i.e. Rs. 220 for a married individual (male or female) having dependent parents.
- (c) Rs. 220 plus Rs. 20 i.e. Rs. 240 for a married individual (male or female) having one dependent child in addition to dependent parents.
- (d) Rs. 240 plus Rs. 20 i.e. Rs. 260 for a married individual (male or female) having more than one dependent child in addition to dependent parents.

In the case of a married individual (male or female) whose spouse has a total income exceeding Rs. 4,000, the amounts of Rs. 220, Rs. 240, and Rs. 260 should, however, be reduced to Rs. 145, Rs. 165 and Rs. 185 respectively.

Surcharge on Income-tax.

The amount of income-tax calculated after adjustment of personal allowance, spouse allowance, children allowance and parents allowance (where applicable) shall be increased by a surcharge at the rate of 10% of such income-tax. It has been explained fully in the illustrations.

The rates at which the tax should be paid in advance during 1st April, 1970 to 31st March, 1971. (Assessment year 1971-72) are as follows —

Rates of Income-tax.

- | | |
|--|--|
| (1) Where the total income does not exceed Rs. 5,000. | Nil ; |
| (2) Where the total income exceeds Rs. 5,000 but does not exceed Rs. 10,000. | 10 per cent of the amount by which the total income exceeds Rs. 5,000 ; |
| (3) Where the total income exceeds Rs. 10,000 but does not exceed Rs. 15,000. | Rs. 500 plus 17 per cent of the amount by which the total income exceeds Rs. 10,000 ; |
| (4) Where the total income exceeds Rs. 15,000 but does not exceed Rs. 20,000. | Rs. 1,350 plus 23 per cent of the amount by which the total income exceeds Rs. 15,000 ; |
| (5) Where the total income exceeds Rs. 20,000 but does not exceed Rs. 25,000. | Rs. 2,500 plus 30 per cent of the amount by which the total income exceeds Rs. 20,000 ; |
| (6) Where the total income exceeds Rs. 25,000 but does not exceed Rs. 30,000. | Rs. 4,000 plus 40 per cent of the amount by which the total income exceeds Rs. 25,000 ; |
| (7) Where the total income exceeds Rs. 30,000 but does not exceed Rs. 40,000. | Rs. 6,000 plus 50 per cent of the amount by which the total income exceeds Rs. 30,000 ; |
| (8) Where the total income exceeds Rs. 40,000 but does not exceed Rs. 60,000. | Rs. 11,000 plus 60 per cent of the amount by which the total income exceeds Rs. 40,000 ; |
| (9) Where the total income exceeds Rs. 60,000 but does not exceed Rs. 80,000. | Rs. 23,000 plus 70 per cent of the amount by which the total income exceeds Rs. 60,000 ; |
| (10) Where the total income exceeds Rs. 80,000 but does not exceed Rs. 1,00,000. | Rs. 37,000 plus 75 per cent of the amount by which the total income exceeds Rs. 80,000 ; |
| (11) Where the total income exceeds Rs. 1,00,000 but does not exceed Rs. 2,00,000. | Rs. 52,000 plus 80 per cent of the amount by which the total income exceeds Rs. 1,00,000 ; |
| (12) Where the total income exceeds Rs. 2,00,000. | Rs. 1,32,000 plus 85 per cent of the amount by which the total income exceeds Rs. 2,00,000 ; |

No income-tax is payable on a total income which is less than Rs. 7,000 if the assessee is a Hindu undivided family having at least two male members of more than 18 years old (neither of whom is a lineal descendant of the other). To explain if the total income of the Hindu undivided family for the year ending 31st March, 1971 (Assessment year 1971-72) is Rs. 6,900, income-tax payable shall be NIL although income-tax payable in accordance with the table above will be as follows :

Rs.	5,000		Nil		Nil
	1,900	“	10%	Rs.	190
				Rs.	190

In addition, income-tax payable by a Hindu undivided family shall not exceed 40% of the amount by which the total income exceeds Rs. 7,000. To explain if the total income of a Hindu undivided family is Rs. 7,050

income-tax payable shall not exceed 40% of Rs. 50 (Rs. 7,050 less Rs. 7,000) i.e. Rs. 20 although the amount payable in accordance with the table above, will be as follows :

Rs.	5,000		Nil		Rs.	Nil
	2,050	"	10%			205
					Rs.	205

Surcharge on Income-tax

The amount of income-tax computed at the rates hereinbefore specified shall be increased by a surcharge for purpose of the Union calculated at the rate of ten per cent of such income-tax.

Paragraph B

In the case of every Co-operative Society—

The rates at which the tax should be paid in advance during 1st April 1969 to 31st March 1970 (Assessment year 1970-71) and 1st April 1970 to 31st March 1971 (Assessment year 1971-72) are as follows—

Rates of income-tax

- (1) Where the total income does not exceed Rs. 10,000. 15 per cent of the total income ;
- (2) Where the total income exceeds Rs. 10,000 but does not exceed Rs. 20,000. Rs. 1,500 plus 25 per cent of the amount by which the total income exceeds Rs. 10,000 ;
- (3) Where the total income exceeds Rs. 20,000. Rs. 4,000 plus 40 per cent of the amount by which the total income exceeds Rs. 20,000 ;

Surcharge on Income-tax

The amount of income-tax computed at the rates hereinbefore specified shall be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent of such income-tax.

Paragraph C

In the case of every Registered Firm—

The rates at which the tax should be paid in advance during 1st April, 1969 to 31st March 1970 (Assessment year 1970-71) and 1st April 1970 to 31st March 1971 (Assessment year 1971-72) are as follows—

Rates of income-tax

- (1) Where the total income does not exceed Rs. 10,000. Nil ;
- (2) Where the total income exceeds Rs. 10,000 but does not exceed Rs. 25,000. 4 per cent of the amount by which the total income exceeds Rs. 10,000 ;
- (3) Where the total income exceeds Rs. 25,000 but does not exceed Rs. 50,000. Rs. 600 plus 6 per cent of the amount by which the total income exceeds Rs. 25,000 ;

- (4) Where the total income exceeds Rs. 50,000 but does not exceed Rs. 1,00,000. Rs. 2,100 plus 12 per cent of the amount by which the total income exceeds Rs. 50,000 ;
- (5) Where the total income exceeds Rs. 1,00,000. Rs. 8,100 plus 20 per cent of the amount by which the total income exceeds Rs. 1,00,000 ;

Surcharge on Income-tax.

The amount of income-tax at the rates hereinbefore specified shall be increased by the aggregate of surcharges for purposes of the Union calculated as specified hereunder—

(a) in the case of a registered firm whose total income included income derived from a profession carried on by it and the income so included is not less than fifty-one per cent of such total income, a surcharge calculated at the rate of ten per cent of the amount of income-tax computed at the rates hereinbefore specified ;

(b) in the case of any other registered firm, a surcharge calculated at the rate of twenty per cent of the amount of income-tax computed at the rates hereinbefore specified ; and

(c) a special surcharge calculated at the rate of ten per cent of the aggregate of the following amounts, namely—

- (i) the amount of income-tax computed at the rates hereinbefore specified ; and
- (ii) the amount of the surcharge calculated in accordance with clause (a), or as the case may be, clause (b) of this sub-paragraph

Paragraph D

In the case of every local authority—

The rates at which the tax should be paid in advance during 1st April, 1969 to 31st March 1970 (Assessment year 1970-71) and 1st April 1970 to 31st March 1971 (Assessment year 1971-72) are as follows—

Rate of income-tax

On the whole of the total income 50 per cent

Surcharge on Income-tax

The amount of income-tax computed at the rate hereinbefore specified shall be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent of such income-tax.

Paragraph E

In the case of the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956—

The rates at which the tax should be paid in advance during 1st April 1969 to 31st March 1970 (Assessment year 1970-71) and 1st April 1970 to 31st March 1971 (Assessment year 1971-72) are as follows—

Rates of income-tax

- | | | |
|------|--|--|
| (i) | on that part of its total income which consists of profits and gains from life insurance business. | 52.5 per cent |
| (ii) | on the balance, if any, of the total income | the rate of income-tax applicable, in accordance with Paragraph F of this Part, to the total income of a domestic Company which is a company in which the public are substantially interested. |

Paragraph F

In the case of a company, other than the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956—

The rates at which the tax should be paid in advance during 1st April 1969 to 31st March 1970 (Assessment year 1970-71) and 1st April 1970 to 31st March 1971 (Assessment year 1971-72) are as follows—

In the case of a domestic company.

Rates of income-tax

- | | |
|---|--|
| (1) Where the company is a company in which the public are substantially interested,— | |
| (i) | in the case where the total income does not exceeds Rs. 50,000 |
| (ii) | in the case where the total income exceeds Rs. 50,000 |
| (2) Where the company is not a company in which the public are substantially interested,— | |
| (i) in the case of an industrial company | |
| (a) | on so much of the total income as does not exceed Rs. 10,00,000. |
| (b) | on the balance, if any, of the total income. |
| (ii) in any other case | |

65 per cent of the total income

Provided that the income-tax payable by a domestic company, being a company in which the public are substantially interested, the total income of which exceeds Rs. 50,000, shall not exceed the aggregate of—

(a) the income-tax which would have been payable by the company if its total income had been Rs. 50,000 (the income of Rs. 50,000 for this purpose being computed as if such income included from various sources in the same proportion as the total income of the company); and

(b) 80 per cent of the amount by which the total income exceeds Rs. 50,000.

II. In the case of a company other than a domestic company—

(i) on so much of the total income as consist of—

(a) royalties received from an Indian concern in pursuance of an agreement made by it with the Indian concern after the 31st day of March, 1961, or

(b) fees for rendering technical services received from an Indian concern in pursuance of an agreement made by it with the Indian concern after the 29th day of February, 1964,

and

where such agreement has, in either case, been approved by the Central Government 50 per cent

(ii) on the balance, if any, of the total income. 70 per cent

§ 4. Demand notice on regular assessment (Sections 156 and 220)—

In addition to making an assessment, the Income-tax Officer is responsible for collecting all demands resulting from his own order or that of higher authorities in an appeal or review or for a penalty imposed. As soon as an assessment is complete, the Income-tax Officer shall serve upon the assessee a demand notice specifying the amount payable by way of tax or penalty.

Failure to pay the tax or penalty specified on a demand notice within 35 days will make the person liable to be "deemed to be in default" except where (i) either the person has presented an appeal, or (ii) the person has been assessed in respect of income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India. In the former case, if the Income-tax Officer is satisfied that the appeal involves a really contentious issue, he may postpone the collection of the disputed portion of the tax. In the latter case, the person will not be treated as in default in respect of the

proportionate amount of tax applicable to such foreign income so long as the prohibition or restriction is not removed. Intentional non-payment of tax on or before the due date leaves the assessee open to the imposition of a penalty as great as the amount of tax due from him.

Income-tax Officers can attach debts due from any person to an assessee who is in default in making payment [Section 226 (3)]. Any amount paid by a person in compliance with the Income-tax Officer's order is a sufficient discharge of his liability to the assessee. If the person concerned does not pay the amount to the Income-tax Officer, further proceedings may be taken against him as if the attachment were made by the Collector.

CHAPTER XXII

LIABILITY OF A NON RESIDENT INDIVIDUAL

§ 1. **Determination of status**—Section 6 enumerates three alternative conditions under which an individual would be treated as “Resident”. An individual who does not conform to any of these conditions would necessarily be treated as “non-Resident” for tax purposes.

An individual is “Resident” in India in any fiscal year (i.e., April—March) if he (1) stays in India for 182 days or more in the year, (2) maintains a dwelling house for him for 182 days or more and is physically present in India for 30 days or more in that year, (3) stays for 365 days or more during four years (April—March) preceding that year and is physically present in India for 60 days or more in that year.

Mr. Adam resides in Calcutta during 1st April, 1969 to 31st May, 1969 and then leaves for Colombo. He would be treated as “Non-Resident” for the Assessment year 1970-71 as his physical presence in the country was less than 182 days during the period 1st April, 1969 to 31st March, 1970 (condition 1). But he may be treated as “Resident” if he continues to maintain his dwelling house till the 30th September or any other subsequent date (condition 2). He may also be treated as “Resident” if he had stayed in the country for more than 365 days during the period 1st April, 1965 to 31st March, 1969 (condition 3).

Maintenance of a dwelling house (condition 2) does not necessarily mean that it should be owned by the individual, but it must be available for his occupation at any time during the year. Maintenance of a house for any member of his family or his friend will not be covered by this condition. On the other hand, if he has a regular reservation of a room for himself in a hotel, he can be said to have maintained for him a dwelling place. Maintaining a house or setting up an establishment is not identical with owning or contracting to buy an unfurnished house. The question of ownership of a house is not at all necessary for the purpose of determining residence in as much as a tenant can also maintain a dwelling place for him. Finally, the word “Resident” indicates a personal quality and is not descriptive of a person’s property.

§ 2. **Scope of taxation**—A non-resident is liable to pay tax in India in respect of income which accrues or is deemed to accrue or arise in India (irrespective of the place of receipt). He is also liable in respect of income received or deemed to have been received in India (irrespective of the place of accrual). Interest on Bonds issued by the Central Government under loan agreements with the International Bank for Reconstruction and Development has been exempted from taxation in the hands of a non-resident. The interest will not be included in computing the total income of the non-resident.

The word “accrue” connotes the idea of accumulation of income on *de die in diem* basis, whereas the word “arise” connotes the idea of the growth of income with a tangible shape of its receivability. To illustrate, when a loan is issued by the Government on tap i.e., the purchase price of the loan payable by a subscriber is increased by certain per cent per week representing the interest payable from the last date of payment of interest, say 15th March, to the date of

purchase, say 15th May. This weekly increase is nothing but interest "accrued" over the period. The interest would, of course, "arise" on the date the interest becomes payable by Reserve Bank of India, say 15th September, since on this date a security-holder acquires the legal right to receive the interest. If the interest is drawn on a subsequent date, say 25th September, then it can be said that the interest has been "received" on that date. In short, the above explains the difference between the words "accrue", "arise" or "is received".

Income "received" in India and "brought into" India are not identical. The former implies two persons, viz., the person who receives and the person from whom he receives. Since a person cannot receive a thing from himself, the income should be treated in such case as "brought into". The receipt of an income must refer to the first occasion upon which the recipient got the money under his control, but it can be "brought into" as many countries as he likes. An income can be received either in India or in Ceylon, but after it has been received in India it can be remitted to Ceylon and then again to Burma. In both these countries i.e. Ceylon and Burma, the income would be treated as "brought into". A non-resident is not liable to Indian tax in respect of his income "brought into" India.

Income accruing or arising outside India to a non-resident is not chargeable to Indian tax. It is non-taxable even if it is brought into India in the year of accrual.

Section 9 of the Act prescribes the circumstances under which an income is deemed to accrue or arise in India. It deals with five specific types of income which are deemed to accrue or arise in India if they accrue or arise directly or indirectly—

- (1) through or from any business connection in India, or
- (2) through or from any property in India, or
- (3) through or from any asset or source of income in India, or
- (4) through or from any money lent at interest and brought into India in cash or in kind, or
- (5) through the transfer of a Capital asset situate in India.

With reference to these types of income, the contract may be executed outside India in terms of which the money would be payable outside the country as such the resulting income could not in law be said to accrue or arise in India. But by virtue of this section the income would be deemed to accrue or arise in India. Though the section enlarges the scope of taxation, it is clear on a scrutiny of the five heads mentioned above that there is some connection between the person earning the income and the country seeking to tax him.

In the first it is the business connection in the second it is the property, in the third it is the asset or source of income and in the fourth it is the money brought in cash or in kind, out of which the income must accrue or arise. The meaning of the expression "business connection" is not restricted by the definition of "business" as per Section 2 (13) in as much as income arising from a business connection may be chargeable under the head "Income from other sources." The expression "business connection" denotes some element of continuity in the relationship between the agent, licensee or other person resident in India who enables the non-resident principal to earn the income. The term "property" in this section is used in the ordinary sense of the word and covers all movable and immovable assets. In addition to income from "buildings or lands appurtenant thereto", it includes income arising from hire of furniture

or machinery situated in India. The expression "any asset or source of income" includes all intangible assets as opposed to "property" explained above. It includes leave salaries and pensions earned in respect of services rendered in India, royalty, brokerage, commission, etc., which in a primary sense arise from Indian sources. The expression "money lent at interest and brought into India in cash or in kind" indicate that the contract of loan takes place outside India and the borrower thereafter brings the money inside the country. Interest payable on such loan would be deemed to arise in India.

But when the money lent by a non-resident outside India has been mixed up with other moneys of similar nature and thereafter brought into India by the borrower, the interest payable on the loans cannot be deemed to arise in India in as much as the moneys had lost their identity and the lenders had no knowledge that their moneys would be brought into India.

Regarding the plea "where income accrues", there are two different lines of approach. One emphasises the place where the income springs or grows, while the other regards the place where the result of the business activities culminates into money or money's worth. If the business consists merely of buying and selling commodities, then the income accrues at the place the goods are sold and proceeds are realised. But the same test does not hold good where the business consists of different stages of production and sale. It is, therefore, quite logical that in the case of business in which the manufacturing process is carried on in one country and the sale of the finished product is effected in another, the income of the business should be apportioned and only that portion of the income which is reasonably attributable to the operations carried out in India should be deemed to accrue in India.

Where the transactions of sales and purchases are between principal and principal, no liability of the non-resident exporter arises in India on accrual basis and the resident importer cannot be treated as agent of the exporter on the basis of such transactions. Though it is very difficult to formulate any hard and fast criteria for determining whether a transaction is between principal and principal, it can be inferred safely that transactions of the following categories are between principal and principal—

(a) The purchases made by the resident importer are outright on his own account not on consignment basis.

(b) The transactions between the resident importer and non-resident exporter are made at prices which would be normally chargeable to other customers.

(c) The non-resident exporter does not exercise any control over the business of the resident importer and sales are effected by the latter on his own account.

(d) The payment to the non-resident exporter is made on delivery of documents and is not dependent in any way on the sales to be effected by the resident importer.

The only other question that may arise is whether the non-resident exporter has any liability under Section 5(1)(a) on the basis of the receipt of the sale proceeds, including profit, in India. Here again, the main question is whether the resident importer took all the risks attendant on the import of the goods to India and no part of the risk in trading thereafter was borne by the non-resident exporter. If, for instance, the non-resident exporter made over the shipping documents to a bank in his own country which discounted the

documents and sent them for collection to the bankers in India who presented the sight or usance bill to the resident importer and delivered the documents to him against payment or acceptance by the latter, no attempt should be made to assess the non-resident exporter on receipt basis. In such a transaction, the non-resident exporter, in effect, receives the value of the documents in his own country.

CENTRAL BOARD OF DIRECT TAXES, CIRCULAR NO. 23 OF 1969

Subject : Non-resident—Income accruing or arising through or from business connection in India—Liability to tax—Section 9 of the Income-tax Act, 1961.

Para—1. Section 9 of Income-tax Act (corresponding broadly to Section 42 of Indian Income-tax Act 1922) provides, inter alia that income accruing or arising directly or indirectly, through or from any business connection in India, shall be deemed to be income accruing or arising in India and hence, where the person entitled to such income is a non-resident it will be includible in his total income. Clarifications issued in the past by the Board on the scope of the provisions of Section 42 and their applicability in certain types of cases, are hereby consolidated and restated for the information and convenience of the public.

Para—2. The expression 'business connection' admits of no precise definition. The import and connotation of this expression has been explained by the Supreme Court in their judgment in *C. I. T. Vs. R. D. Aggarwal & Co.* and Another [I. T. R. Vol 56(1965) Page 20]. The question whether a non-resident has a 'business connection' in India from or through which income, profits or gains can be said to accrue or arise to him within the meaning of Section 9 of the Income-tax Act, 1961, has to be determined on the facts of each case. However, some illustrative instances of a non-resident having business connection in India, are given below

(a) Maintaining a branch office in India for the purchase or sale of goods or transacting other business ; (b) Appointing an agent in India for the systematic and regular purchase of raw materials or other commodities, or for sale of the non-resident's goods, or for other business purposes ; (c) Erecting a factory in India where the raw produce purchased locally is worked into a form suitable for export abroad ; (d) Forming a local subsidiary company to sell the products of the non-resident parent company ; (e) Having financial association between a resident and a non-resident company.

Para—3. The following clarifications would be found useful in deciding questions regarding the applicability of the provisions of Section 9 in certain specific situations—

(1) Non-resident exporter selling goods from abroad to Indian Importer.

(i) No liability will arise on accrual basis to the non-resident on the profits made by him where the transactions of sale between the two parties, are on a principal-to-principal basis. In all cases, the real relationship

between the parties has to be looked into on the basis, and agreement existing between them, but where—

- (a) the purchases made by the resident are outright on his own account,
 - (b) the transactions between the resident and the non-resident are made at arm's length and at prices which would be normally chargeable to other customers,
 - (c) the non-resident exercises no control over the business of the resident and sales are made by the latter on his own account, or
 - (d) the payment to the non-resident is made on delivery of documents and is not dependent in any way on the sales to be effected by the resident,
- it can be inferred that the transactions are on the basis of principal-to-principal.

(ii) A question may arise in the above type of cases whether there is any liability of the non-resident under Section 5(1)(a) of the Income-tax Act, 1961, on the basis of receipt of sale proceeds including the profit in India. If the non-resident makes over the shipping documents to a bank in his own country which discounts the documents and sends them for collection to the bankers in India, who present the sight or usance draft to the resident importer and deliver the documents to him against payment or acceptance by the latter, the non-resident will not be liable to tax on the profit arising out of the sales on receipt basis. Even if the shipping documents are not discounted in the foreign country, but are handed over in India against payment or acceptance, no portion of the profits will be chargeable to tax under the Income-tax Act, if this is the only operation carried on in India on behalf of the non-resident.

(2) Non-resident company selling goods from abroad to its Indian subsidiary :

(i) A question may arise whether the dealings between a non-resident parent company and its Indian subsidiary can at all be regarded as on a principal-to-principal basis since the former would be in a position to exercise control over the affairs of the latter. In such a case, if the transactions are actually on a principal-to-principal basis and are at arm's length and the subsidiary company functions and carries on business on its own, instead of functioning as an agent of the parent company, the mere fact that the Indian company is a subsidiary of the non-resident company will not be considered a valid ground for invoking Section 9 for assessing the non-resident.

(ii) Where a non-resident parent company sells goods to its Indian subsidiary, the income from the transaction will not be deemed to accrue or arise in India under Section 9, provided that (a) the contracts to sell are made outside India, (b) the sales are made on a principal-to-principal basis and at arm's length and (c) the subsidiary does not act as an agent of the parent. The mere existence of a "business connection" arising out of the parent subsidiary relationship will not give rise to an assessment, nor will the fact that the parent company might exercise control over the affairs of the subsidiary.

3) Sale of plant and machinery to an Indian importer on instalment basis :

Where the transaction of sale and purchase is on a principal-to-principal basis and the exporter and the importer have no other business

connection, the fact that the exporter allows the importer to pay for the plant and machinery in instalments will not, by itself render the exporter liable to tax on the ground that the income is deemed to arise to him in India. The Indian importer will not, in such a case, be treated as an agent of the exporter for the purposes of assessment.

(4) Foreign agents of Indian exporters :

A foreign agent of Indian exporter operates in his own country and no part of his income arises in India. His commission is usually remitted directly to him and is, therefore, not received by him or on his behalf in India. Such an agent is not liable to income-tax in India on the commission.

(5) Non-resident person purchasing goods in India :

A non-resident will not be liable to tax in India on any income attributable to operations confined to purchase of goods in India for export, even though the non-resident has an office or an agency in India for this purpose. Where a resident person acts in the ordinary course of his business in making purchases for a non-resident party, he would not normally be regarded as an agent of the non-resident under Section 163 of the Act. But, where the resident person is closely connected with the non-resident purchaser and the course of business between them is so arranged that the resident person gets no profits or less than the ordinary profits which might be expected to arise in that business, the Income-tax Officer is empowered to determine the amount of profits which may reasonably be deemed to have been derived by the resident person from that business and include such amount in the total income of the resident person.

(6) Sales by a non-resident to Indian customers either directly or through agents :

(i) Where a non-resident allows an Indian customer, facilities of extended credit for payment, there would be no assessment merely for this reason provided that (i) the contracts to sell were made outside India and (ii) the sales were made on a principal-to-principal basis.

(ii) Where a non-resident has an agent in India and makes sales directly to Indian customers, Section 9 of the Act will not be invoked, even if the resident pays his agent an overriding commission on all sales to India, provided that (a) the agent neither performs or undertakes to perform any service directly or indirectly in respect of these direct sales and the making of these sales can, in no way, be attributed to the existence of the agency or to any trading advantage or benefit accruing to the principal from the agency, (b) the contracts to sell are made outside India, and (c) the sales are made on a principal-to-principal basis.

(iii) Where a non-resident's sales to Indian customers are secured through the services of an agent in India, the assessment in India of the income arising out of the transaction will be limited to the amount of profit which is attributable to the agent's services, provided that (a) non-resident principal's business activities in India are wholly channelled through his agent, (b) the contracts to sell are made outside India and (c) the sales are made on a principal-to-principal basis. In the assessment of the amount of profits allowance will be made for the expenses incurred, including the agent's commission, in making the sales. If the agent's commission fully represents the value of the profit attributable to his service it should *prima facie* extinguish the assessment.

(iv) Where a non-resident principal's business activities in India are not wholly channelled through his agent in India, the assessment in India will

be on the sum-total of the amount of profit attributable to his agent's activities in India and the amount of profit attributable to his own activities in India, less the expenses incurred in making the sales.

(7) Extent of the profit assessable under Section 9 :

Section 9 does not seek to bring into the tax-net the profit of a non-resident which cannot reasonably be attributed to operations carried out in India. Even if there be a business connection in India, the whole of the profit accruing or arising from the business connection is not deemed to accrue or arise in India. It is only that portion of the profit which can reasonably be attributed to the operations of the business carried out in India, which is liable to income-tax.

To constitute a business connection some continuity of relationship between the person in India who helps to make the profits and the person outside India who receives or realises the profits, is necessary. Where all that has happened is that a few transactions of purchases of raw materials have taken place in India and the manufacture and sale of goods have taken place outside India, the profits arising from such sales cannot be considered to have arisen out of a business connection in India. Where, however, there is a regular agency established in India for the purchases of the entire raw materials required for the purpose of manufacture and sale abroad and the agent is chosen by reason of his skill, reputation and experience in the line of trade, it can be said that there is a business connection in India so that a portion of the profits attributable to the purchase of raw materials in India can be apportioned under the explanation (a) to Section 9 (1)(i).

§ 3. Foreign Technicians and others [Section 10 (6)]—"Technicians" mean persons having specialised knowledge and experience in constructional or manufacturing operations, in mining or in the generation or distribution of electricity or other forms of power as also industrial or business management techniques. It is not, however, necessary that the Technician should be actually handling a particular machine or be physically engaged in the particular work in which he is an expert. Even if he is employed as a consultant on matters pertaining to his field of technical knowledge or practical experience, he should be regarded as a Technician.

In the case of Technicians having specialised knowledge and experience in constructional or manufacturing operations or in mining or in the generation or distribution of electricity or other forms of power, the exemption is admissible in respect of "Salary" earned for 12 months from the date of his arrival in India. This exemption will be extended to 36 months if his contract of service had been approved by the Government within one year. If the amount of tax payable on the salary is borne by the employer, then the exemption will continue for a further period of 60 months.

In the case of Technicians having specialised knowledge and experience in industrial or business management techniques, the exemption is admissible in respect of "Salary" earned for six months from the date of his arrival in India, provided his contract of service was approved by the Government within one year.

In all cases, the Technician must be "non-resident" of India in the four financial years preceding the year of arrival.

Remuneration received by a non-Indian citizen as Ambassador, High Commissioner, envoy, minister, charge d'affairs, commissioner, counsellor, Secretary, adviser or attache of an embassy, legation or commission of a foreign state should be excluded from the computation of total income.

Similarly, remuneration received by a non-Indian citizen as Consul-General, Consul, Vice-Consul, Consular agent or as a Trade Commissioner or

other official representative in India of a foreign State should be excluded from the computation of total income.

Any remuneration received by a non-resident and non-Indian citizen employee of a foreign enterprise which does not conduct any business within India is not liable to tax if the employee does not stay in India for more than 90 days. Salaries received by a non-resident and non-Indian citizen in respect of services rendered on a foreign ship are not liable to tax if the employee does not stay in India for more than 90 days.

The remuneration and foreign income of an individual assigned to duties in India under any technical assistance programme are exempt from tax. The exemption will also cover the foreign income of the family members of the individual. [Section 10 (8) and 10 (9)].

Foreign technical collaboration—Payments for technical know-how, etc.—Admissibility and taxation of payments in the assessments of Indian and foreign participants to the collaboration—Clarification regarding.

Para 1. It has been represented to the Board that in determining the tax liability of foreign and Indian participants in technical collaboration agreements, different norms and principles are being applied by different Income-tax Officers with the result that there is a great deal of uncertainty in the minds of the foreign parties regarding the incidence of Indian tax on the income derived by them under such agreements. A suggestion has, therefore, been made that, in order to remove this uncertainty the various tax problems arising under technical collaboration agreements may be reviewed by the Board and detailed instructions issued to the assessing officers so that there is uniformity as well as certainty in the matter of tax-treatment.

Para 2. It may be observed at the outset that the tax problems arising in the cases of foreign collaborations are extremely varied and diverse and the decision depends not merely upon the terms of the particular agreement but also on the nature of the technical know-how actually imparted thereunder. It is, therefore, not possible to lay down clear-cut solutions to cover all conceivable situations. Only general principles and guidelines can be indicated which should be applied in individual cases according to the facts of each case.

Para 3. "Technical know-how" is a term of wide connotation and includes several kinds of technical knowledge, assistance and services. There are several ingredients constituting technical know-how, such as (i) the design of the product to be manufactured, (ii) the design of the process for manufacture, (iii) the design and engineering of the plan, (iv) the erection and commissioning of the plant, etc., etc. There are also different ways of imparting technical know-how which may be (i) through outright sale of designs, know-how, etc. (ii) by lending the services of foreign technicians, (iii) by giving technical assistance during the period of agreement, (iv) through royalty or licensing agreements, or (v) through foreign capital participation. A further important aspect is whether or not the nomenclature used in the collaboration agreement really indicates the correct nature and purpose of the payment. In such cases, the real nature and purpose of the payment has to be ascertained and taken into account.

Para 4. Broadly speaking, the tax problems arising under technical collaboration agreements are of two kinds, viz., those relating to the admissibility of the expenditure incurred in the assessments of the Indian participant, and those relating to the taxation of the amounts in the hands of the non-resident participant. As regards the former, i.e., the admissibility of the expenditure in the hands of the Indian participant, the question would be whether the expenditure has been incurred for acquiring or bringing into existence an asset or advantage of enduring benefit to the assessee's business. If so, the expenditure will have to be regarded as one on capital account. On the other hand, if the expenditure has been incurred for running the business and working it with a view to produce profits, the payment would be allowable as revenue expenditure. The question has necessarily to be examined with reference to the facts of each particular case and no general proposition can be laid down that all payments for technical know-how should be regarded as revenue payments or that they are always capital in nature.

Para 5. A point to be remembered in this connection is that the nature of a receipt as capital or revenue in the hands of non-resident participant is not always determinative of the nature of the outgoing in the hands of the person who pays it. If the payment is an outright payment for, say the acquisition of a secret process or formula, the benefit of which would enure permanently to the Indian participant's business, there would be every justification for treating the payment, in question, as of a capital nature. It may, however, well happen that the payment has been received by the foreign participant in the ordinary course of his business so that it has to be assessed as a revenue receipt in his hands. It can also happen in some cases that the receipt might be regarded as a capital receipt in the hands of the foreign participant but the payment may be regarded as revenue expenditure in the assessment of the Indian participant. However, before disallowing the expenditure, in the assessment of the Indian participant as a capital expenditure, the Income-tax Officer must fully understand and comprehend the nature of the asset or enduring benefit which the assessee has acquired. If what has been acquired under the agreement is merely a licence for the user, for a limited period, or the technical knowledge of the foreign participant, together with or without the right to use the patents and trade marks of the foreign party the payment would not bring into existence an asset of enduring advantage to the Indian participant, and should be regarded as expenditure incurred for the purpose of running the business during the period of the agreement. The payment would, therefore, be revenue in nature. The recent decision of the Supreme Court in the case of *Commissioner of Income-tax v. Ciba of India Ltd.* [I. T. R. Vol. 69 (1968), page 692] provides clear guidance in cases of this type.

Para 6. The first step, therefore, in dealing with foreign collaboration agreements is to analyse the terms of the agreement and ascertain the facts relating to the working or implementation of the agreement in order to find out, what rights or benefits or property have been acquired under the agreement by the Indian participant and for what consideration. In a case where the payment is made wholly or in part for a specific service or the supply of a clearly defined item of technical know-how, no difficulty is likely to arise in determining the nature of the payment, i.e. whether the expenditure is on capital or revenue account. It happens, however, that in several agreements, the payment of a single sum is stipulated for a variety of services, assistance and information supplied by the foreign participant. Sometimes, this payment is expressed as a percentage of sales made by the Indian undertaking. The Income-tax Officer will, therefore, have to go into the facts and determine the extent to which the payment made represents consideration for—

- (a) the mere user of technical knowledge and information for running the business during the period of the agreement ;
- (b) the user of patents or trade marks ; or
- (c) the acquisition of an asset or benefit of enduring advantage to the business.

While payments for (a) and (b) above would be allowable as revenue expenditure in the hands of the Indian participant expenditure under (c) would be of a capital nature.

Para 7. (i) Where the technical know-how obtained relates to the design and engineering of the plant in India or the erection and commissioning of the plant, the payment should be treated as forming part of the cost of the machinery and plant and depreciation and development rebate should be allowed thereon. Where however, the technical know-how is not directly relatable to the depreciable assets and cannot be regarded as forming part of their cost, the expenditure, though treated as capital, would not be eligible for the allowance of depreciation and development rebate.

(ii) As regards technical know-how obtained in the form of drawings and designs and technical information and knowledge concerning the product to be manufactured and the process of manufacture, it will be sometimes difficult to decide whether the payment made therefor is capital or revenue expenditure. A pertinent question to be answered in this connection will be : Have the technique and knowledge obtained through the designs, drawings, etc., become the property of the Indian participant for all time to come or only for the duration of the agreement ? If it is only for the duration of the agreement, the next question is whether the agreement is for such a long period that the Indian participant might still be said to have acquired an enduring benefit for the purpose of his trade. Further, after the conclusion of the period of the collaboration, what are the rights and benefits, if any, which would permanently accrue to the Indian participant's business ? These and other related questions have to be looked into in order to decide whether the expenditure is capital or revenue in nature. If as a result of this examination, it is found that no asset or advantage of a permanent or enduring character is acquired by the Indian participant, the expenditure should be treated as revenue expenditure and allowed as a deduction. It may, however, be noted in this connection, that if the said expenditure on product and process designs and drawings is treated as capital expenditure the Indian participant will not be entitled to any depreciation or development rebate on the outlay. The amount cannot also be amortised and allowed over a period of years (unless the payment is for the acquisition of patent rights which are discussed separately) as there is at present no provision to this effect in the Income-tax Act.

(iii) As regards expenditure of a capital nature incurred after 28-2-66 on the acquisition of patent rights or copyrights used for the purpose of business, Section 35A of the Income-tax Act provides that the expenditure will be allowed as a deduction in equal instalments over a period of 14 years.

Para 8. As regards the foreign participant's tax liability also, the first question would be whether the amount received for the supply of technical know-how is a receipt on capital account or revenue account. The answer would again depend on the facts of the case. It has to be observed that the nature of the outgoing in the hands of the Indian participant will not always be determina-

tive of the nature of the receipt in the hands of the foreign party. In the U. K., it has been held by courts that a receipt from the sale of know-how would be a capital receipt only where the sale of the technical know-how or the imparting of technical knowledge and information results in the transfer or parting with of the property or asset of any special knowledge or skill which would ripen into a form of property and that after such transfer, the transferor is deprived of using the asset. (Please see *Evans Medical Supplies Ltd. v. Moriarty* [I. T. R, Vol. 35(1959), page 707]. In all other cases, where no capital asset or property is parted with and the transaction is merely a method of trading by which the recipient acquires the particular sum of money as profits and gains of that trade, the consideration received for the sale of technical know-how will be on revenue account.

Para 9. If the amount received by the foreign participant is a revenue receipt in his hands and the amount is received by him outside India the further questions that would arise are, whether the payment is :

- (i) for services rendered abroad, or
- (ii) for services rendered in India, or
- (iii) represents royalty.

If the amount received by the foreign participant is for services rendered entirely outside India, that sum will not be subject to tax in India, because the income will be accruing to the non-resident wholly outside India. Where the payment received is for services rendered in India, the amount will be taxable in India, subject, of course, to the deduction of legitimate expenses of a revenue nature incurred by the foreign participant for the purpose of earning such income. If the payment received is royalty, the question of allocating the income between India and outside India would not arise and the whole amount would be liable to tax in India where the patent has been exploited. Deduction will however, be admissible against the royalty income for the cost of current services rendered in order to earn the royalty.

Para 10. Cases where payments of each of the above categories are clearly and truly ascertainable from the terms of the agreement and with reference to all relevant facts will not present serious difficulty. But in cases where the agreement stipulates a consolidated payment or where the true character of the payment is different from that ascribed to it in the agreement, difficulty would arise in the allocation of the payment for the various services rendered under the agreement. Ordinarily a payment expressed as a percentage of the sales in India is to be treated as payment of royalty and taxed in India. When the payment is stated to be for technical know-how or services rendered abroad but is related to the sales, the Income-tax Officer will have to go into the facts of the case and determine the extent to which the payment attributed to technical services abroad represents in fact payment for, (i) services abroad, (ii) services in India, and (iii) royalty or extra royalty for exploiting the know-how in India.

It is therefore necessary that the utmost care should be exercised by the assessing officers in determining the true nature of the payment when it is a consolidate figure or is expressed as a percentage of sales, by whatever term the contracting parties may decide to call it. Allocation of the payment among the various services in India and abroad and towards the royalty element, if any, included in the arrangement has to be made objectively and

after a careful appraisal of the precise term of the collaboration agreement and the actual manner in which the terms have been implemented in practice.

Para 11 With reference to cases of foreign capital participation, it may be noted that where shares are allotted to a non-resident participant in the form of equity capital of an Indian concern, in consideration for transfer abroad of technical know-how or services, or delivery abroad of machinery and plant, and the payment is not taxable under Section 5(2) (b) of the Income-tax Act as income accruing or arising or deemed to accrue or arise in India, it has been decided that no attempt should be made by the department to bring to tax the profits or gains on each transaction merely on the ground that the suits of the shares is in India. However, if any operations are effected or services are rendered in India, the income will, to that extent, accrue in India and will be chargeable to tax in India. If payments of royalty are made by way of a free issue of equity shares the value thereof will of course be liable to tax. It is only those shares which are issued at the time of incorporation of the Indian company in lieu of a lump sum payment for the technical know-how delivered abroad, that will be exempt from income-tax as the tax on capital gains. Further if the shares issued in consideration for technical know-how at the time of the incorporation of the Indian company are subsequently sold, the capital gains realised therefrom would be subject to tax. Preference shares allotted will be treated in the same way as equity shares in this regard.

Para 12 In the end, a reference may be made to the provisions of Section 195 of the Income-tax Act, particularly sub-section (2) of that section, which deserves to be more widely made use of than is being done at present. In a foreign technical collaboration, where the Indian participant who is responsible to pay a technical fee, etc. to the foreign party considers that the whole of such sum would not be income chargeable in the hands of the recipient, he could apply to the Income-tax Officer under Section 195 (2) for determination of the appropriate proportion of such payment which would be taxable and in respect of which tax is to be deducted in accordance with sub-section (1). In effect, therefore, this sub-section provides for an advance ruling being given by the Income-tax Officer in the matter of the tax liability of the non-resident participant. For clarification of other matters not covered by the provisions of Section 195, either the Indian participant or the foreign participant in the collaboration could furnish the full facts and the terms of the agreement to the Commissioner of Income-tax concerned or the Central Board of Direct Taxes and seek a ruling.

§ 4. Rates of tax.

Assessment year 1969-70

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|---|---|
| (1) Where the total income does not exceed Rs. 5,000 | 5 per cent of the total income ; |
| (2) Where the total income exceeds Rs. 5,000 but does not exceed Rs. 10,000. | Rs 250 plus 10 per cent of the amount by which the total income exceeds Rs. 5,000 ; |
| (3) Where the total income exceeds Rs. 10,000 but does not exceed Rs. 15,000. | Rs 750 plus 15 per cent of the amount by which the total income exceeds Rs. 10,000 ; |
| (4) Where the total income exceeds Rs. 15,000 but does not exceed Rs. 20,000. | Rs. 1,500 plus 20 per cent of the amount by which the total income exceeds Rs. 15,000 ; |

- | | | |
|------|---|---|
| (5) | Where the total income exceeds Rs. 20,000 but does not exceed Rs. 25,000. | Rs. 2,500 plus 30 per cent of the amount by which the total income exceeds Rs. 20,000 ; |
| (6) | Where the total income exceeds Rs. 25,000 but does not exceed Rs. 30,000. | Rs. 4,000 plus 40 per cent of the amount by which the total income exceeds Rs. 25,000 ; |
| (7) | Where the total income exceeds Rs. 30,000 but does not exceed Rs. 50,000. | Rs. 6,000 plus 50 per cent of the amount by which the total income exceeds Rs. 30,000 ; |
| (8) | Where the total income exceeds Rs. 50,000 but does not exceed Rs. 70,000. | Rs. 16,000 plus 60 per cent of the amount by which the total income exceeds Rs. 50,000 ; |
| (9) | Where the total income exceeds Rs. 70,000 but does not exceed Rs. 1,00,000. | Rs. 28,000 plus 65 per cent of the amount by which the total income exceeds Rs. 70,000 ; |
| (10) | Where the total income exceeds Rs. 1,00,000 but does not exceed Rs. 2,50,000. | Rs. 47,500 plus 70 per cent of the amount by which the total income exceeds Rs. 1,00,000 ; |
| (11) | Where the total income exceeds Rs. 2,50,000. | Rs. 1,52,500 plus 75 per cent of the amount by which the total income exceeds Rs. 2,50,000. |

Assessment year 1970-71.

- | | | |
|------|---|--|
| (1) | Where the total income does not exceed Rs. 5,000. | 5 per cent of the total income ; |
| (2) | Where the total income exceeds Rs. 5,000 but does not exceed Rs. 10,000. | Rs. 250 plus 10 per cent of the amount by which the total income exceeds Rs. 5,000 ; |
| (3) | Where the total income exceeds Rs. 10,000 but does not exceed Rs. 15,000. | Rs. 750 plus 17 per cent of the amount by which the total income exceeds Rs. 10,000 ; |
| (4) | Where the total income exceeds Rs. 15,000 but does not exceed Rs. 20,000. | Rs. 1,600 plus 23 per cent of the amount by which the total income exceeds Rs. 15,000 ; |
| (5) | Where the total income exceeds Rs. 20,000 but does not exceed Rs. 25,000. | Rs. 2,750 plus 30 per cent of the amount by which the total income exceeds Rs. 20,000 ; |
| (6) | Where the total income exceeds Rs. 25,000 but does not exceed Rs. 30,000. | Rs. 4,250 plus 40 per cent of the amount by which the total income exceeds Rs. 25,000 ; |
| (7) | Where the total income exceeds Rs. 30,000 but does not exceed Rs. 50,000. | Rs. 6,250 plus 50 per cent of the amount by which the total income exceeds Rs. 30,000 ; |
| (8) | Where the total income exceeds Rs. 50,000 but does not exceed Rs. 70,000. | Rs. 16,250 plus 60 per cent of the amount by which the total income exceeds Rs. 50,000 ; |
| (9) | Where the total income exceeds Rs. 70,000 but does not exceed Rs. 1,00,000. | Rs. 28,250 plus 65 per cent of the amount by which the total income exceeds Rs. 70,000 ; |
| (10) | Where the total income exceeds Rs. 1,00,000 but does not exceed Rs. 2,50,000. | Rs. 47,750 plus 70 per cent of the amount by which the total income exceeds Rs. 1,00,000 ; |
| (11) | Where the total income exceeds Rs. 2,50,000. | Rs. 1,52,750 plus 75 per cent of the amount by which the total income exceeds Rs. 2,50,000 ; |

Illustration 45

Find out the amount of tax payable by Mr. Smith, a non-resident, on the basis of his return of income.

Return of income for the year ended 31st March, 1970

	Amount of income	Tax deducted at source
Interest on securities	Rs. 16,000	Rs. 5,280
Rupee Dividends	12,000	3,960
Interest on Fixed Deposits	2,000	660
Total Indian Income	Rs. 30,000	Rs. 9,900
Foreign Dividends	20,000	—
Total World Income	Rs. 50,000	Rs. 9,900

ANSWER

Accounting year 1. 4. 69 to 31. 3. 70 —Assessment year 1970-71

Income-tax payable on Indian income of Rs. 30,000
at the rates ruling in the Assessment year 1970-71.

Rs. 25,000		Rs. 4,250	
5,000	at 40%	2,000	Rs. 6,250

Special surcharge payable for the Assessment year 1970-71.

10% of Rs. 6,250	625
Total Tax payable	Rs. 6,875
Tax deducted at source	Rs. 9,900
Tax Refundable	Rs. 3,025

§ 5. Deduction of tax at source (Section 192 to 194)—To prevent evasion of tax payable by non-residents, the Law provides for deduction of income-tax at source in respect of income receivable by them. Where salary is payable to a non-resident, income-tax should be deducted. Interest on Government securities is always paid after deduction of income-tax irrespective of the status of the recipient. In the case of a non-resident, income-tax is also deductible from interest (excluding interest on securities), commission, brokerage, rent, royalty etc., which are otherwise chargeable under the Income-tax Act. Interest payable by a bank to the depositors of its non-Indian Branches (who have no knowledge that their deposits would be brought into India for the purpose of investment in India) is not chargeable under the Act. The question of deduction of income-tax at source in respect of such interest cannot, therefore, arise.

Income-tax deducted at source remain part of the income of the non-

resident and should be included in his total income (the deducted amount being treated as having been paid on behalf of the non-resident). Levy by deduction is merely a provisional mode of assessment and after the close of the year the tax payable is computed. If the amount of tax calculated is more than the amount deducted at source the deficiency is recovered ; on the other hand, if the amount payable is less than the amount deducted at source the excess will be refunded.

The person responsible for making the deduction of income-tax shall pay the amount of tax deducted to the credit of the Central Government within one week from the date of such deduction. He shall also furnish to the non-resident a certificate specifying the amount and the rate at which the deduction has been made. If the payer does not deduct or after deducting fails to deposit the amount, he would be deemed to be an assessee in default in respect of the tax. He would also be liable to a penalty in case of wilful failure to deduct and pay the tax. Failure without reasonable cause to furnish the non-resident with the certificate is also an offence punishable with fine.


§ 6. Agent's liability (Section 163)—A non-resident may be assessed either in his own name or in the name of the agent. If the non-resident fails to make a return of his income in response to the notice calling for the return, an *ex-parte* assessment can be made on him just as on any resident assessee. The law empowers the revenue Authorities to treat certain persons, who are not really agents, as "statutory agents" for the purpose of recovery of tax payable by non-residents. It contemplates three classes of persons who may be treated as agent of non-residents : (1) any person employed by or on behalf of a non-resident, (2) any person having a business connection with the non-resident, (3) any person through or from whom the non-resident is in receipt of any income, profits or gains.

Before treating a person as agent of a non-resident, the Income-tax Officer must serve a notice on that person regarding his intention of treating him as agent of the non-resident. Opportunity must be given to the agent to explain his position. After the assessment has been made on the agent, he would be regarded as the assessee for all purposes of the Act and as such he becomes personally liable for the tax. He can also appeal against the assessment if he denies his liability to be so assessed.

A notice under Section 43 (old section) of the Indian Income-tax Act, 1922, treating a resident as agent of a non-resident for the purposes of assessment to income-tax has got to be served in respect of each assessment year in order to fix upon the resident liability for tax payable by the non-resident. A notice served in respect of a particular assessment year is not sufficient for making the resident liable for payment of advance tax payable during that assessment year as agent of the non-resident. The scheme of the Income-tax Act is that every assessment is self-contained and the vicarious liability for appointment imposed by an appointment as agent under Section 43 (old section) only extends to the liability for the assessment for which the appointment was made and cannot extend to the liability for the next year. The mere previous assessment of a person as agent of a non-resident is not sufficient to continue that liability in the subsequent year also ; for each of the subsequent years such liability must be imposed afresh by a proper and valid order under Section 43 (old section). The provision contained in Section 43 (old section) that the person upon whom a notice under that section is served shall "for all purposes of this Act" be deemed to be such agent only means that when an appointment is made for a particular assessment it is good for all purposes so far as that assessment is concerned. It

does not mean that the person will be an agent in respect of the liability for tax of subsequent year also. [I. T. R., Vol. 49 (1963), page 866]. [Bombay High Court decision]

In order to safeguard the agent as against his principal, he is empowered to retain in his hands of his principal's money, a sum sufficient to meet the tax liability. Further, to provide for the contingency of a disagreement between the principal and the agent regarding the quantum of the amount to be retained, provision has been made for the Income-tax Officer to issue a certificate to the agent on his application authorising him to retain a specified amount pending the assessment. The agent in such a case would not be personally liable beyond the amount mentioned in the certificate.



CHAPTER XXIII

COMPANY SURTAX

§ 1. Scope of the Act—To secure an equitable distribution of the burden of taxation and to satisfy the criterion of the ability to pay, the super profits tax introduced in the Assessment year 1963-64 was replaced by a levy of surtax on the profits of the companies with effect from the Assessment year 1964-65. **The Companies (Profits) Surtax Act, 1964** extends to the whole of India including the State of Jammu and Kashmir and brings within the charge only the companies.

§ 2. Chargeable profits (First Schedule)—After the income-tax assessment has been completed and the amount of "total income" has been determined, the incidence of surtax starts. The "total income" shall thereafter be adjusted by certain deductions and additions. The following deductions shall be made from the "total income"—

- (1) "Short-term" and "Long-term" Capital gains.
- (2) Compensation for termination or variation of managing agency, commission agency or any other similar agency.
- (3) Profits of Life Insurance business.
- (4) Any income arising out of sale of business assets in excess of the written down value.
- (5) Income of new industrial undertakings and hotels which qualifies for rebate under Section 84 of the Income-tax Act.
- (6) Interest on tax-free securities.
- (7) Donations for charitable purposes and to the National Defence Fund to the extent these are eligible for relief under Section 88 of the Income-tax Act, 1961.
- (8) Dividends from an Indian company or a non-Indian company which has made the prescribed arrangements for the declaration and payment of dividends within India.
- (9) Royalties received from Government or a Local Authority or any Indian concern.
- (10) Interest on foreign loans and fees paid to a non-resident company (which has not made the prescribed arrangements for the declaration and payment of dividends within India) for rendering technical services.
- (11) In the case of a banking company, any sum transferred during the previous year to a Reserve Fund under Section 17 (1) of the Banking Companies Act, 1949 or deposited with the Reserve Bank of India under Section 11(2)(B)(ii) of the said Act.
- (12) The amount of Income-tax saved on account of reliefs provided in Annual Finance Acts in respect of export profits and manufacturer's sales to exporters.
- (13) The amount of income-tax payable by the company on its "total income" reduced by items (1), (2), (3) and (8) mentioned above after making allowances for any relief, rebate or deduction in respect of income-tax to which the company may be entitled under the provisions of the Income-tax Act or the Annual Finance Act.

The reduced total income shall thereafter be increased by the amount of interest on debentures or loans borrowed from the government or the Industrial Finance Corporation or the Industrial Credit and Investment Corporation or any person in a country outside India. It shall be increased further by the amount of "commission", "entertainment" and "advertisement" expenses incurred, which in the opinion of the Income-tax Officer with the previous approval of the Inspecting Assistant Commissioner, are excessive having regard to the circumstances of the case.

§ 3. Capital computation (Second Schedule)—For the purpose of calculating surtax, computation of Capital is most important. The amount of Capital, shall be the aggregate of the following—

- (1) Paid-up Capital on the 1st day of the "previous year" ; plus
- (2) Development Rebate Reserve on the 1st day of the "previous year" created by debiting Profit and Loss Account of an earlier period ; plus
- (3) Reserves on the 1st day of the "previous year" created out of profit subjected to income-tax in an earlier period ; plus
- (4) Cash received and credited to Share Premium account on the 1st day of the "previous year" ; plus
- (5) Debentures and loans borrowed from government, or Industrial Finance Corporation or any person in a country outside India ;

diminished by the cost of assets whose income is not includible in the "Chargeable Profits" in terms of clause (iii) or clause (vi) or clause (viii) of Rule 1 of the First Schedule (e.g., tax-free securities, shares etc.). Assets acquired out of borrowed money outstanding on the 1st day of the "previous year" or out of any fund, and surplus or any reserve which has not been considered for the purposes of Capital computation of an earlier period shall be disregarded in computing the "Cost of assets".

Paid-up Share Capital or reserves brought into existence by revaluing book assets and credits to Share Premium account otherwise than for cash shall be disregarded for the purpose of Capital computation.

If the paid-up Share Capital is increased or reduced after the 1st day of the "previous year" a proportional increase or decrease shall be effected in the Capital computation. If any portion of the income is not includible in the "total income" (as in the case of the tea companies) the Capital computation shall, proportionately, be reduced.

§ 4. Statutory deduction [Section 2 (8)]—Statutory deductions means an amount equal of 10% of the Capital computation in terms of the Second Schedule with a minimum of Rs. 2,00,000. But if the "previous year" is more than 12 months or less than 11 months, the Capital computation shall be increased or decreased proportionately.

§ 5. Rate of tax (Third Schedule)—If the adjusted "total income" in terms of the First Schedule is more than the "statutory deduction" the excess will be liable to surtax at the rates fixed in the Third Schedule i. e., 40% for the Assessment year 1964-65 and 1965-66. The rate was reduced to 35% from the Assessment year 1966-67. The rate was further reduced to 25% from the Assessment year 1969-70.

CHAPTER XXIV

MISCELLANEOUS

§ 1. Tax Clearance Certificate (Section 230)—For safeguarding the interest of the Revenue, the law provides that a person who is not domiciled in India, or who, even if domiciled in India has in the opinion of the Revenue Authorities, no intention of returning to India, must obtain a tax clearance certificate before leaving India. Responsibilities have been placed on the owner or a Charterer of Ship or Aircraft to see that no person is allowed to go out of India without producing the requisite certificate. If he fails to do so, he will be personally liable to pay the amount of tax due by the person going out of India. The following categories of persons have, however, been exempted from producing a certificate—

- (a) All persons below the age of 18 years.
- (b) Passengers in transit holding through tickets from a place outside India provided that the total period spent in India is less than 90 days.
- (c) All employees of the Central and State Government and Local Authorities.
- (d) Diplomatic envoys, Trade Commissions, Trade Agents of Foreign and Commonwealth Countries, Foreign Consular Officials of the United Nations Organisation and the staff employed in these offices.
- (e) Officials and Representatives of Foreign and Commonwealth Governments visiting India on the business of their government.

§ 2. Restriction on registration of transfer of immovable properties (Section 230A)—For safeguarding the interest of the revenue, provision was made in the Assessment year 1964-65 for production of Tax Clearance Certificate at the time of registration of transfer of any immovable property (other than agricultural land) valuing more than Rs. 50,000. The certificate from the Income-tax Officer should state that the transferor of the property has paid in full all taxes due from him under the Income-tax Act, Wealth-tax Act, Expenditure-tax Act, Gift-tax Act or the registration of the document would not prejudicially affect the recovery of any arrear tax under any of the above enactments.

§ 3. Rectification of mistakes (Sections 154 & 155)—Commissioners, Appellate Tribunals, Appellate Assistant Commissioners and Income-tax Officers are authorised to rectify mistakes apparent from the facts or documents which were before them when they passed revisional, appellate or original assessment order as the case may be. They are, however, debarred from making general review. The rectification may be done on their own motion or on the application of an assessee within four years from the date of the relevant order. The assessee is not allowed to introduce any new facts in this connection. The rectification should be made only in respect of mistakes apparent from the records. Where the rectification enhances an assessment or reduces a refund, the Income-tax Authorities must allow the assessee a reasonable opportunity of being heard.

The power under these sections is limited to the rectification of mistakes which are apparent from the records. The records in this connection does not mean only the order of assessment, but it comprises all proceedings on which the assessment order is based and the Income-tax Officer is entitled for the

purpose of exercising his jurisdiction to look into the whole evidence and the "written down value" of the preceding year, it is open to him to make fresh calculation in accordance with the law applicable including the rules made thereunder. If, for instance, the Income-tax Officer finds that in an earlier assessment year there was an apparent arithmetical mistake in the calculation of the "written down value" of the properties of the assessee which resulted in a corresponding mistake in the assessment of the relevant assessment year, he can take the corrected figure for the purposes of the assessment and it cannot be said that the mistake was not apparent from the record. If he discovers that the very basis of the different earlier assessments was erroneous because of an initial mistake in determining the "written down value", it cannot be said that this would not be a mistake apparent from the record. And if in determining the correct "written down value" the Income-tax Officer makes correct calculation, it cannot be said that it is not rectifying a mistake apparent from the record. The limit to which the Income-tax Officer can go back does not stop at the "written down value" of the earlier year, but extends up to the figure of the original cost, and the method enjoyed by Section 10(5)(b) (old) is not that the Income-tax Officer should merely scale down the "written down value" of the earlier year but that he should take into consideration the actual cost, determining it afresh for himself, if necessary, take also into consideration the allowances granted in the past and then make his own computation as to the "written down value" for the assessment year with which he is concerned. Thus it cannot be said that merely because under Section 35 (old) some "written down value" and the depreciation amount have been determined, they are a final determination and binding for all times to come; nor does the determination operate as estoppel or "resjudicata" for the following year. [I. T. R., Vol. 36 (1959), page 350] [Supreme Court decision]

In computing the total income liable to income-tax, any excess profits tax or business profits tax levied on chargeable profits is allowable as a deduction. Consequently, if the excess profits tax or business profits tax is reduced, it will enhance the total income liable to income-tax. The law provides, therefore, that where an excess profits tax or business profits tax assessment is modified in appeal, revision or otherwise after the completion of the corresponding income-tax assessment, the re-computation of total income for income-tax purposes will be treated as rectification of mistake and the period of 4 years will be counted from the date of modification.

§ 4. Appearance by authorised representative (Section 288)—Occasionally, the Income-tax Authorities require the assessee to attend in person to produce evidence in the course of assessment proceedings. In such cases, the assessee must depute an authorised representative, unless his personal attendance is required under Section 131 for examination on oath or affirmation. In all cases, a Power of Attorney on properly stamped paper must be filed. The right of the assessee to appear through an agent has been restricted to a relative, a person regularly employed by him, a Lawyer, an Accountant and an Income-tax practitioner. No other person is allowed to appear before the authorities in any proceedings.

"Person regularly employed by the assessee" includes any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings.

CHAPTER XXV

REVISIONAL PROBLEMS

Question No. 1.

Sri Bansi Badan Bardhan purchased a house (constructed in 1948) on 1. 9. 1963 for Rs. 60,000 for his own occupation. The house could have been let out by him at annual rent of Rs. 3,600. He paid municipal tax of Rs. 300 during the year ended 31st March, 1970. Sri Bardhan started on 1. 4. 69 a retail shop to sell textile goods. Sale price was fixed at cost plus 20% profit and the accounts were maintained on "Cash basis". He requested you to prepare his return of income on the basis of the following—

To purchases	Rs. 60,000	By sales	Rs. 66,000
„ Expenses	5,100		
„ Profit	900		
	<hr/> Rs. 66,000		<hr/> Rs. 66,000

On scrutiny of the accounts it was found that the sale price of the goods remaining unsold on 31. 3. 70 was Rs. 6,000 and the sales included a sale to the family of Sri Bardhan in October, 1969 to the extent of Rs. 2,400 and the amount was debited to his personal Drawing Account

ANSWER

It is an accepted principle that an individual cannot earn any income in the process of consuming any food or clothing while he is a dealer in those goods. Similarly, he cannot earn any income while he occupied a house for his own residence which might fetch a rent if let out. But in terms of Section 23(2) the monetary value of the benefit arising out of the occupation of the house is taxable in the hands of the owner.

Under the "Cash System" of accounting, the difference between the opening and closing stocks should be taken into account in computing the taxable income of the year. The taxable income of Sri Bardhan for the Assessment year 1970-71 should be computed as follows—

Profit as per Accounts	Rs. 900
Add : Unsold stock of goods at cost price	5,000
	<hr/> Rs. 5,900
Less : Difference between the sale price and cost price of the goods sold to the family of the proprietor	400
	<hr/> Rs. 5,500
Annual value of the residential house	Rs. 3,600
Less : Statutory Allowance @ 50%	1,800
	<hr/> Rs. 1,800
The amount will however be limited to 10% of Rs. 5,500	Rs. 550
Less : 1/6th for repairs	92
	<hr/> 458
Total Income (Rounded off)	<hr/> Rs. 5,960

Question No. 2.

From the following particulars, determine Sri Patit Paban Pyne's total income for the Assessment year 1970-71 and amount of tax payable by him. Sri Pyne is unmarried.

(a) Interest on 4% Treasury Savings Deposit Certificates for Rs. 20,000	Rs.	800
(b) Income from House properties (net)		9,200
(c) One-third share in the Hindu undivided family income of Rs. 15,000		5,000
(d) One-fourth share in a registered firm assessed on a business loss of Rs. 16,000		4,000
(e) One-fifth share in an unregistered firm assessed on a business profit of Rs. 10,000		2,000
(f) Loss in share speculation business		3,000
(g) Profit arising from sale of "Long-term" Capital Asset."		4,000

(Final—I. C. W. A.)

ANSWER

**Computation of total income of Sri Patit Paban Pyne
for the Assessment year 1970-71.**

Income from House properties (net)	Rs.	9,200
Share of loss in a registered firm		4,000
	Rs.	5,200
Share of income in an unregistered firm		2,000
Total Income	Rs.	7,200
Income-tax payable on Rs. 7,200 at the rates ruling in the Assessment year 1970-71.		
Rs. 5,000	Rs. 250	
2,200 @ 10%	220	
	Rs. 470	
Less : Personal allowance	125	Rs. 345.00
Less : Rebate on unregistered firm's income		
Rs. $345 \times 2,000$		95.83
7,200	Rs.	249.17
Net income-tax payable		
Rounded off	Rs.	249
Special Surcharge @ 10% of Rs. 249 (Rounded off)		25
Total amount payable	Rs.	274

- Notes :** (1) Interest on 4% Treasury Savings Certificates should not be included in the computation of total income [Section 10 (15)(ii)].
 (2) Share of Hindu undivided family income should not be included in the computation of the total income of its members [Section 10 (2)].

- (3) Loss in share speculation business can be set off only against any other speculation business profit [Section 73]. It can, however, be carried forward to the Assessment year 1971-72.
- (4) Profit arising from sale of "Long term" Capital Asset is taxable if it is more than Rs. 5,000 [Section 80T].

Question No. 3

Calculate the amount of tax payable by Sri Sham Sundar Samajpati (unmarried) for the Assessment year 1970-71 on the basis on the following particulars—

(a) Income from House properties (net)	Rs.	12,000
(b) One-third share in Hindu undivided family income of Rs. 12,000		4,000
(c) Rupee Dividends after deduction of tax @ 20%		8,000
(d) One-half share in a registered firm assessed on a business loss of Rs. 20,000		10,000
(e) One-fourth share in an unregistered firm assessed on a business profit of Rs. 12,000		3,000
(f) Loss in share speculation business		5,000
(g) Interest in Dharmatalla Post Office Savings Bank Account No 4362		500
(h) Life Insurance premium paid in January, 1970 (Capital value without profit Rs. 50,000)		4,000

(Final—I. C. W. A.)

ANSWER

Computation of total income of Sri Sham Sundar Samajpati for the Assessment year 1970-71

Income from House properties (net)	Rs.	12,000
Rupee Dividends (Gross)		10,000
	Rs.	22,000
Less ; Business loss in a registered firm		10,000
	Rs.	12,000
Add ; Share of profit in an unregistered firm		3,000
Gross Total Income	Rs.	15,000
Less : Life Insurance premium		
60% of Rs. 4,000	Rs.	2,400
Dividends (Section 80 £)		1,000
		<u>3,400</u>
Total Income	Rs.	11,600

Income-tax payable on Rs. 11,600 at the rates ruling in the Assessment year 1970-71.

Rs.	10,000	Rs.	750
	1,600 @ 17%		272
		Rs.	1,022
Less : Personal allowance			125
			<u>897</u>
Less : Rebate on share of profit in an unregistered firm			
	Rs.	897 × 3,000	214
			<u>11,600</u>
Net Income-tax payable		Rs.	683

Net Income-tax payable	Rs.	683
Special Surcharge @ 10% of Rs. 683 (Rounded off)		68
Total amount payable	Rs.	751
Tax deducted at source on dividends	Rs.	2,000
Less : Tax payable		751
Net amount refundable	Rs.	1,249

Notes : (1) Share of Hindu undivided family income and interest in Dharamtalla Post Office Savings Bank Account should not be included in the computation of total income.

(2) Loss in share speculation business should be carried forward to the Assessment year 1971-72.

Question No. 4.

Sri Gour Gopal Ganguly (married with two children) was an employee of a firm of Chartered Accountants on an annual salary of Rs. 9,000. He insured his life for Rs. 20,000 annual premium being Rs 3,000 payable in September each year. For financial difficulties Shri Ganguly took Rs. 3,000 as loan from the Life Insurance Corporation in August, 1969 and paid the premium. Calculate the amount of tax payable by Shri Ganguly for the Assessment year 1970-71. Will the liability differ if (A) the amount of premium is paid by his employer and recovered from his salary during the year ended 31st March, 1970 ; or if (B) the amount is gifted by Shri Ganguly's maternal uncle ; or if (C) the amount is paid by his employer without being recovered from Shri Ganguly ?

ANSWER

If the amount of premium is paid out of a loan from the Life Insurance Corporation, Shri Ganguly will not be entitled to any tax concession in terms of Section 80C (2) (a). The amount of tax payable for the Assessment year 1970-71 shall be calculated as follows—

Income-tax on Rs.	5,000	Rs.	250
	4,000 @ 10%		400

Rs. 650

Less : Wife and children allowance

240

Rs. 410

Special Surcharge @ 10%

41

Rs. 451

(A) If the amount of premium is paid out of "advance salary" recovered by the employer during the year ended 31st March, 1970, the amount of tax payable for the Assessment year 1970-71 by Shri Ganguly shall be calculated as follows—

Salary for the year ended 31-3-70	Rs.	9,000
Less : 60% of Life Insurance premium		
of 10% of Rs. 20,000 i.e., Rs. 2,000		1,200

Rs. 7,800

Income-tax on Rs.	5,000	Rs.	250
	2,800 @ 10%		280

Rs. 530

Less : Wife and children allowance

240

Rs. 290

Special Surcharge @10%

29

Rs. 319

(B) If the amount of premium is paid out of gifts made by Shri Ganguly's maternal uncle, no tax concession will be admissible to Shri Ganguly in terms of Section 80C(2) (a). The amount of tax payable will be Rs. 451.

(C) If the amount of premium is paid by Shri Ganguly's employer without being recovered from him, the payment should be treated as a perquisite in the hands of Shri Ganguly in terms of Section 17(2)(iv) and as such taxable in the following manner—

Salary for the year ended 31-3-70	Rs.	9,000
Taxable perquisite		3,000
Gross Total Income	Rs.	12,000
Less : 60% of Life Insurance premium		
of 10% of Rs. 20,000 i.e., Rs. 2,000		1,200
	Rs.	10,800
Income-tax on Rs. 10,000	Rs.	750
800 @ 17%		136
	Rs.	886
Less : Wife and children allowance		240
	Rs.	646
Special Surcharge @ 10% of Rs. 646		65
(Rounded off)	Rs.	711

Question No. 5.

Mr. Miller, an American national came to Calcutta on the 1st November 1964 and left for Rangoon on the 31st May, 1965. From Rangoon he left for Colombo on the 1st December, 1965. He came back to Madras on the 1st February, 1967 and left for Hong Kong on the 31st October, 1967. How will he be assessed for the Assessment year 1965-66, 1966-67, 1967-68 and 1968-69 (his "previous year", being July to June) ? Will his status differ if he chooses the "Calendar year" as his previous year ?

ANSWER

Assessment year	Previous year	No. of days stayed	Status
1965-66	1.7.63 to 30.6.64	NIL	Non-Resident
1966-67	1.7.64 to 30.6.65	210	Resident
1967-68	1.7.65 to 30.6.66	NIL	Non-Resident
1968-69	1.7.66 to 30.6.67	149	Do.
Assessment year	Previous year	No of days stayed	Status
1965-66	1.1.64 to 31.12.64	60	Non-Resident
1966-67	1.1.65 to 31.12.65	150	Do.
1967-68	1.1.66 to 31.12.66	NIL	Do.
1968-69	1.1.67 to 31.12.67	272	Resident

Question No. 6.

Sir Mohindra Mohan Malhotra (unmarried) was employed in the Bombay Branch of a Shipping Company having its branches throughout the world.

He drew his salary for April & May, 1969 at the rate of Rs. 500 per month. He went on leave on 1.6.69 for six months on full pay which was drawn by him in East Africa. While he was on leave he started a textile business on 1.7.69 in East Africa. He returned to India on 30.11.69 and resigned from his service but continued to look after his textile business from Bombay. Profit from the textile business during 1.7.69 to 31.3.70 amounted to Rs. 6,000. Calculate the amount of tax payable by Sri Malhotra for the Assessment year 1970-71 treating him as Resident and Ordinarily Resident.

ANSWER

Income-tax payable by Sri Malhotra—unmarried, Resident and Ordinarily Resident—for the Assessment year 1970-71 will be calculated as follows—

Salary earned and drawn in India	Rs.	1,000	
Salary earned in India but drawn outside India		3,000	
		<hr/>	Rs. 4,000
Business controlled from India			6,000
Total Income			<hr/> Rs. 10,000 <hr/>

Income-tax payable on Rs. 10,000 at the rates ruling in the Assessment year 1970-71.

Rs.	5,000	Rs.	250	
	5,000	@ 10 %	500	
			<hr/> Rs. 750	
Less ; Personal allowance			125	Rs. 625
Special surcharge @ 10% of Rs. 625 (Rounded off)				63
Total amount payable				<hr/> Rs. 688 <hr/>

Question No. 7.

Sri Din Dayal Dugar, married having two children, had the following income during the year ended 31st March, 1970

Business carried inside India	Rs.	4,000
Business carried outside India but controlled from India		3,000
Dividends on Sterling Shares		2,000
	Rs.	<hr/> 9,000 <hr/>

Calculate the amount of tax payable treating Sri Dugar as (a) Resident and Ordinarily Resident, (b) Resident but not Ordinarily Resident and (c) Non-Resident.

ANSWER

(a) Income-tax payable by Sri Dugar as Resident and Ordinarily Resident for the Assessment year 1970-71 will be calculated as follows—

Profit from Business carried inside India	Rs.	4,000
Profit from Business carried outside India but controlled from India		3,000
Dividend on Sterling Shares		2,000
Total Income	Rs.	<hr/> 9,000 <hr/>

Income-tax on Rs. 5,000	Rs. 250
4,000 @ 10%	400
	<hr/>
Less : Wife and children allowance	Rs. 650
	240
	<hr/>
Special surcharge payable @ 10% of Rs. 410	Rs. 410
	41
	<hr/>
Total amount payable	Rs. 451

(b) Income-tax payable by Sri Dugar as Resident but not Ordinarily Resident for the Assessment year 1970-71 will be calculated as follows—

Profit from business carried inside India	Rs. 4,000
Profit from business carried outside India but controlled from India	3,000
	<hr/>
Total Income	Rs. 7,000

Income-tax on Rs. 5,000	Rs. 250
2,000 @ 10%	200
	<hr/>
Less : Wife and children allowance	Rs. 450
	240
	<hr/>
Special surcharge payable @ 10% of Rs. 210	Rs. 210
	21
	<hr/>
Total amount payable	Rs. 231

(c) Income-tax payable by Sri Dugar as Non-Resident for the Assessment year 1970-71 will be calculated as follows—

Profit from business carried inside India	Rs. 4,000
	<hr/>
Total Income	Rs. 4,000
	<hr/>
Income-tax on Rs. 4,000 @ 5%	Rs. 200
	<hr/>
Amount payable after adjustment of marginal relief	NIL

Question No. 8.

Ram Ratan Raha retired on the 30th June, 1968 after completing 40 year's service with Merchants and Traders Ltd. and received a gratuity of Rs. 15,000 His basic salary for the years ended 31st December, 1967, 31st December, 1966 and 31st December, 1965 was Rs. 620 per month, Rs. 600 per month and Rs. 580 per month. Calculate the amount of gratuity exempt from taxation in terms of Section 10(10).

ANSWER

- (1) Average monthly basic salary for 3 years ended 31st December, 1967
 $\text{Rs. } 620 \times 12 + \text{Rs. } 600 \times 12 + \text{Rs. } 580 \times 12$

$$\frac{\quad}{36} = \text{Rs. } 600$$

- (2) One-half month's basic salary for each year of completed service = Rs. $600 \times 40 \times \frac{1}{2}$ Rs. 12,000
 (3) 15 month's basic salary = Rs. 600×15 Rs. 9,000

The amount of gratuity exempt from taxation in terms of Section 10 (10) = Rs. 9,000

Question No. 9.

Sri Sasi Sekhar Senapati retired on the 30th April, 1968 after completing 36 year's service with Continental Shipping Corporation Ltd. received a gratuity of Rs. 40,000. His basic salary for the years ended 31st December, 1967, 31st December, 1966 and 31st December, 1965 was Rs. 2,100 per month, Rs. 2,000 per month and Rs. 1,900 per month. Calculate the amount of gratuity exempt from taxation in terms of Section 10 (10).

ANSWER

- (1) Average monthly basic salary for
3 years ended 31st December, 1967

$$\frac{\text{Rs. } 2,100 \times 12 + \text{Rs. } 2,000 \times 12 + \text{Rs. } 1,900 \times 12}{36} = \text{Rs. } 2,000$$
- (2) One-half month's basic salary for each year of
completed service = Rs. $2,000 \times \frac{1}{2} \times 36$ Rs. 36,000
- (3) 15 month's basic salary = Rs. $2,000 \times 15$ Rs. 30,000
- The amount of gratuity exempt from taxation in terms
of Section 10(10) = Rs. 24,000 (maximum amount admissible).

Question No. 10.

Sarat, Subodh, and Suren major sons of late Phanibhusan, carried on the cloth business at Burdwan, Bankura and Birbhum under the style of "Sarba-mangala Cloth Shop" started by their father in 1948. They mutually agreed to partition their ancestral cloth shops with effect from 1. 10. 69. The books of account showed a profit of Rs. 12,000 for the period 1. 4. 69 to 30. 9. 69. Sarat took over the shop at Burdwan which showed a profit of Rs. 6,000 for the period 1. 10. 69 to 31. 3. 70. Subodh took over the shop at Bankura which showed a profit of Rs. 8,000 for the period 1. 10. 69 to 31. 3. 70. Suren took over the shop at Birbhum which showed a profit of Rs. 4,000 for the period 1. 10. 69 to 31. 3. 70. Sarat (married, having 2 children) was a part-time lecturer in a local college on a salary of Rs. 450 per month. Subodh (married, having 1 child) was owner of a house let out at Rs. 250 per month. Suren (unmarried) had no other source of income. Calculate the amount of income-tax payable by the family and the sons for the Assessment year 1970-71.

ANSWER

Income-tax payable by the family for the Assessment year 1970-71 will be calculated as follows—

Profit from the shops at Burdwan, Bankura and
Birbhum for the period 1.4.69 to 30-9-69

Rs. 12,000

Income-tax on Rs. 10,000	Rs. 750
2,000 @ 17%	340
	<hr/>
	Rs. 1,090
Less : Family allowance	200
	<hr/>
	Rs. 890
Special surcharge payable @ 10% of Rs. 890	89
	<hr/>
Total amount payable	Rs. 979
	<hr/>

Income-tax payable by Sarat for the Assessment year 1970-71 will be calculated as follows—

Salary for the year ended 31st March, 1970	Rs.	5,400
Profit from cloth shop at Burdwan for the period 1. 10. 69 to 31. 3. 70		6,000

Total Income	Rs.	11,400
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Income-tax on Rs. 10,000	Rs.	750
1,400 @ 17%		238

Less : Wife and children allowance	Rs.	988	Rs.	748
		240		

Special surcharge @ 10% of Rs. 748 (Rounded off)		75
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Total amount payable	Rs.	823
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Income-tax payable by Subodh for the Assessment year 1970-71 will be calculated as follows—

Income from cloth shop at Bankura for the period 1. 10. 69 to 31. 3. 70	Rs.	8,000
Income from House property	Rs.	3,000
Less : 1/6th for repair		500

Total Income	Rs.	10,500
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Income-tax on Rs. 10,000	Rs.	750
500 @ 17%		85

Less : Wife and children allowance	Rs.	835
		220

Special surcharge @ 10% of Rs. 615 (Rounded off)	Rs.	615
		62

Total amount payable	Rs.	677
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Income-tax payable by Suren for the Assessment year 1970-71 will be calculated as follows—

Profit from cloth shop at Birbhum for the period 1. 10. 69 to 31. 3. 70	Rs.	4,000
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Income-tax on Rs. 4,000 @ 5%	Rs.	200
Less : Personal allowance		125

Total amount payable	Rs.	75
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Amount payable after adjustment of marginal relief		NIL
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Question No. 11.

Ajoy, Biren and Charu are active partners in a firm of cloth dealers. The firm's Profit and Loss Account for the year ended 31st March, 1970 is appended below. Compute the total income of the firm for income-tax purposes and allocate the same amongst the partners.

To Salaries	Rs. 16,500	By Gross profit	Rs. 1,20,000
Rent, rates etc.	6,000	Interest on partners' drawings :	
Income-tax	3,250	Ajoy Rs. 1,200	
Advertisement	1,500	Biren 850	
Postage and telegrams	1,300	Charu 450	2,500
Reserve for doubtful debts	1,750		
Fire Insurance premium	1,200		
Salary paid to partners:			
Ajoy Rs. 6,000			
Biren 4,800			
Charu 3,600	14,400		
Interest on Capital :			
Ajoy Rs. 1,200			
Biren 2,400			
Charu 3,000	6,600		
Net profit :			
Ajoy 50% Rs. 35,000			
Biren 30% 21,000			
Charu 20% 14,000	70,000		
	<u>Rs. 1,22,500</u>		<u>Rs. 1,22,500</u>

(Final—I. C. W. A.)

ANSWER**Computation of total income for the year ended 31. 3. 70
Assessment year 1970-71.**

Profit as per Profit and loss A/c		Rs. 70,000
Add : Income-tax	Rs. 3,250	
Reserve for doubtful debts	1,750	5,000
		<u>Rs. 75,000</u>
Less : Interest on partners' drawings .		
Ajoy	Rs. 1,200	
Biren	850	
Charu	450	2,500
		<u>72,500</u>
Add : Salary paid to partners.		
Ajoy Rs. 6,000		
Biren 4,800		
Charu 3,600	Rs. 14,400	
		<u>21,000</u>
Interest paid to partners :		
Ajoy Rs. 1,200		
Biren 2,400		
Charu 3,000	6,600	
		<u>93,500</u>
Total income for Income-tax purposes		<u>Rs. 93,500</u>

Allocation to Partners :

	Ajoy	Biren	Charu	Total
Salary	Rs. 6,000	Rs. 4,800	Rs. 3,600	Rs. 14,400
Interest on Capital	1,200	2,400	3,000	6,600
Share of Profit	37,500	22,500	15,000	75,000
	Rs. 44,700	Rs. 29,700	Rs. 21,600	Rs. 96,000
Less : Interest on drawings	1,200	850	450	2,500
	Rs. 43,500	Rs. 28,850	Rs. 21,150	Rs. 93,500

Question No. 12.

X, Y, and Z are partners in a firm Their profit and Loss Account for the year ended 31st March, 1970 is given below :

To loss	Rs. 8,000	By Distribution of net loss	
Interest on Capital		X	Rs. 8,000
X	Rs. 3,000	Y	6,000
Y	2,000	Z	2,000
Z	1,000		Rs. 16,000
Z's salary	—	2,000	
	Rs. 16,000		Rs. 16,000

You are informed that X had income from other sources amounting to Rs. 8,000. Y and Z had no other income. State how the assessment will be made if the firm is treated as (i) a registered one and (ii) an unregistered one.

(Calcutta University—M. Com.)

ANSWER

Computation of total income for the year ended 31. 3. 70.

Assessment year 1970-71.

Net loss as per Profit and Loss Account	Rs. 16,000
Less : Interest on capital	
X	Rs. 3,000
Y	2,000
Z	1,000
	Rs. 6,000
Salary paid to Z	2,000
	8,000
Total Income for Income-tax purposes	Loss Rs. 8,000

Allocation to Partners:

	Total	X	Y	Z
Salary	Rs. 2,000	X	X	Rs. 2,000
Interest	6,000	Rs. 3,000	Rs. 2,000	1,000
Share of loss	Loss 16,000	Loss 8,000	Loss 6,000	Loss 2,000
	Loss Rs. 8,000	Loss Rs. 5,000	Loss Rs. 4,000	Profit Rs. 1,000

(i) If the firm is assessed as a registered one, then the total income of the firm for Income-tax purposes will be Rs. 8,000 Loss—Allocated as X—Loss Rs. 5,000 Y—Loss Rs. 4,000 and Z—Profit Rs. 1,000. X will be Assessed on a total income of Rs. 3,000 (Rs. 8,000 as income from other sources minus share of loss of Rs. 5,000). Y will be assessed on a loss of Rs. 4,000 which will be carried over to the Assessment year 1971-72 and Z will be assessed on a total income of Rs. 1,000.

(ii) If the firm is assessed as an unregistered one, then total income of the firm will be Rs. 8,000 Loss which will be carried over to the Assessment year 1971-72 and will be set off against the positive income of the firm, if any, from the same business in that assessment year.

Question No. 13

A, B and C are partners of a firm. They share profits and losses in the proportion on one-half, one-third and one-sixth respectively. The following is their Profit and Loss Account for the year ending 31st March, 1970.

To Salaries and wages	Rs. 18,500	By Gross profit	Rs. 1,40,000
Business expenses	16,700	Profit in	
Rent paid to B	3,000	speculation	6,000
Partner's salaries			
A Rs. 5,000			
B 4,000	9,000		
Interest	1,500		
Reserve for doubtful debts	5,000		
Commission to C	1,000		
Charity	1,000		
Fines paid to Customs	300		
Interest on Capital :			
A Rs. 4,200			
B 3,600			
C 1,200	9,000		
Net profit transferred			
to partner's Capital Accounts	81,000		
	Rs. 1,46,000		Rs. 1,46,000

You are required to ascertain the taxable income of the firm (on the assumption that the firm is a registered one) and share of income of each partner from the firm.

(Calcutta University—M. Com.)

ANSWER**Computation of total income for the year ended 31. 3. 70****Assessment year 1970-71**

Profit as per Profit and Loss Account		Rs. 81,000
Add : Reserve for doubtful debts	Rs. 5,000	
Charity	1,000	
Fines paid to customs	300	6,300
		Rs. 87,300
Add : Salary paid to partners :		
A Rs. 5,000		
B 4,000	Rs. 9,000	
Interest paid to partners :		
A Rs. 4,200		
B 3,600		
C 1,200	9,000	
Commission paid to C	1,000	19,000
Total Income for Income-tax purposes		Rs. 1,06,300

Allocation to Partners :

	Total	A	B	C
Salary	Rs 9 000	Rs 5,000	Rs 4,000	Rs 1,200
Interest	9 000	4 200	3 600	1,200
Commission	1 000		/	1,000
Share of profit	87 300	43 650	29 100	14,550
	Rs 1 06 300	Rs 52 850	Rs 36 700	Rs 16,750

Question No. 14.

Misra, Medhi and Mahapatra are active partners in a firm of cloth dealers. The firm's Profit and Loss Account for the year ended 31st March 1970 is appended below. Compute the total income of the firm for Income-tax purposes and allocate the same among the partners.

To Salaries	Rs 12 000	By Gross profit	Rs 81,000
Rent, rates etc	5 500		
Income-tax	2 750		
Advertisement	1 700		
Postage & telegram	1 800		
Reserve for doubtful debts	1 250		
Salary paid to partners			
Misra Rs 7,200			
Medhi 4 800			
Mahapatra 2 400	14 400		
Interest on Capital			
Misra Rs 2 400			
Medhi 1 200			
Mahapatra 3 000	6 600		
Balance carried down	35 000		
	Rs 81 000		Rs 81,000
Net profit allocated		By Balance brought down	Rs 35,000
Misra 25 000	Rs 15 000	Profit arising from	
Medhi 35 000	21 000	Sale of "Long term"	
Mahapatra 40 000	24 000	Capital Asset (Com-	
		prising of Securities)	25,000
	Rs 60 000		Rs. 60,000

(Utkal University—M. Com.)

ANSWER

Computation of total income for the year ended 31.3.70
Assessment year 1970-71

Net profit as per	
Profit and Loss Account	Rs 60 000
Less : Profit arising	
from sale of "Long	
term" Capital Asset	25 000
Carried over	Rs. 35,000

	Total	Misra	Medhi	Mahapatra
Brought Forward	35,000			
Add Income-tax	2,750			
Reserve for doubtful debts	1,250			
	<hr/>			
Add : Salary	Rs. 39,000	Rs. 9,750	Rs. 13,650	Rs. 15,600
Interest on Capital	14,400	7,200	4,800	2,400
	<hr/>	<hr/>	<hr/>	<hr/>
Business profit	Rs. 60,000	Rs. 19,350	Rs. 19,650	Rs. 21,000
Profit arising from sale of "Long-term Capital Asset (As per Note)	7,000	1,750	2,450	2,800
	<hr/>	<hr/>	<hr/>	<hr/>
Total Income	Rs. 67,000	Rs. 21,100	Rs. 22,100	Rs. 23,800

Note : Profit arising from Sale of "Long-term" Capital Asset comprising of Securities (Section 80 T)	Rs. 25,000
Less 100% of Rs. 5,000	Rs. 5,000
65% of 20,000	13,000
	<hr/>
	Rs. 7,000

Question No. 45

Sri Radha Raman Raha furnished you with the following particulars with a request to compute his total income for the year ended 31st March, 1970 on the basis of which he will submit his return of income to the Income-tax authorities—

- Salary—Rs. 3,000 per month.
- Annual profit bonus @ 20% of salary paid in February, 1970.
- He was provided with a rent-free unfurnished accommodation in Calcutta for which a rent of Rs. 750 was paid monthly by his employer.
- His Life Insurance premium of Rs. 6,000 was paid by his employer in March, 1970. (Policy for Rs. 80,000 without profits).
- His wife was sick and medical expenses amounting to Rs. 3,000 was paid by his employer in January, 1970.
- He was provided with a domestic servant whose monthly salary of Rs. 100 was paid by his employer.
- He purchased books and engineering journals valuing Rs. 1,250 in September, 1969.
- Rs. 3,000 was paid by his employer in July, 1969 towards education of his eldest son.

Final—(I.C.W.A.)**ANSWER**

**Computation of total income of Sri Radha Raman
Raha for the year ended 31st March, 1970.
Assessment year 1970-71.**

Salary @ Rs. 3,000 per month	Rs. 36,000
Annual profit bonus @ 20% of salary	7,200
Rent-free accommodation	3,600
	<hr/>
Carried over	Rs. 46,800

Brought Forward	Rs. 46,800
Life Insurance premium paid by employer	6,000
Free domestic servant	1,200
Education expense borne by employer	3,000
	<hr/>
Less : Cost of books purchased	Rs. 57,000 500
	<hr/>
Gross Total Income	Rs. 56,500
Less : Deduction for Life Insurance Premium	
60% of Rs. 5,000	Rs. 3,000
50% of 1,000	500
	<hr/>
	3,500
	<hr/>
Total Income	Rs. 53,000

- Notes :** (1) Rent paid by the employer for the rent-free unfurnished accommodation is less than 30% of the salary as such the taxable benefit should be computed @ 10% of salary Rs. 36,000.
- (2) Reimbursement of medical expenses incurred by employees is not taxable.
- (3) Admissible expenses for purchase of books are limited to Rs. 500.

Question No. 16.

Sri Nabin Chandra Dutt (unmarried) received during the year ended 31st March, 1970, Rs. 12,000 as basic salary and Rs. 3,000 as annual bonus @ 25% of the basic salary. He contributed Rs. 1,800 towards his Provident Fund contributions, a similar amount was paid by his employer. Interest @ 9% amounting to Rs. 1,800 was credited to his Provident Fund Account. He paid Rs. 4,000 as Life Insurance premium (Capital sum assured being Rs. 30,000 without profits)

Calculate the amount of tax payable by him if the Provident Fund is recognised under the Income-tax Act, 1961, as also if the Provident Fund is unrecognised private fund.

(Final—I.C.W.A.)

ANSWER

(i) If the Provident Fund is recognised under the Income-tax Act, 1961, the amount of tax payable by Sri Nabin Chandra Dutt will be calculated as follows—

Salary for the year ended 31st March, 1970	Rs. 12,000
Annual Bonus @ 25% of Salary	3,000
Employer's contribution to Prov. Fund	Rs. 1,800
Less : 10% of Salary	1,200
	<hr/>
Interest on Prov. Fund @ 9%	Rs. 1,800
Less : Proportional amount @ 6%	1,200
	<hr/>
Gross Total Income	Rs. 16,200
Less : Life Insurance premium of 10% of Rs. 30,000 i.e., Rs. 3,000 plus Provident Fund contribution of Rs. 1,800 in all Rs. 4,800 —60% thereof	2,880
	<hr/>
Total Income	Rs. 13,320

Income-tax payable on Rs. 13,320 at the rates ruling in the Assessment year 1970-71.

Rs.	10,000	Rs.	750
	3,320 @ 17%		564
		Rs.	1,314
Less : Personal allowance			125
			1,189
Special Surcharge @ 10% of Rs. 1,189 (Rounded off)			119
Total amount payable		Rs.	1,308

(ii) If the Provident Fund is unrecognised private Fund, the amount of tax payable by Sri Nabin Chandra Dutt will be calculated as follows -

Salary for the year ended 31st March, 1970	Rs.	12,000
Annual bonus @ 25% of salary		3,000
Gross Total Income	Rs.	15,000
Less : Life Insurance premium of Rs. 4,000 but limited to 10% of Rs 30,000 i.e., 3,000 —60% thereof		1,800
Total Income	Rs.	13,200

Income-tax payable on Rs. 13,200 at the rates ruling in the Assessment year 1970-71.

Rs.	10,000	Rs.	750
	3,200 @ 17%		544
		Rs.	1,294
Less : Personal allowance			125
			1,169
Special Surcharge @ 10% of Rs 1,169 (Rounded off)			117
Total amount payable		Rs.	1,286

Question No. 17.

Sri Santi Saran Senapati furnished you with the following particulars with a request to compute his total income for the year ended 31st March, 1970 on the basis of which he will submit his return of income to the Income-tax Authorities.

- | | | |
|---|-----|-------|
| (a) Salary after deduction of income-tax of Rs. 700 and Provident Fund contribution of Rs. 1,800. | Rs. | 9,500 |
| (b) Recognised Provident Fund contribution by his employer. | Rs. | 1,800 |
| (c) Interest on Provident Fund balance @ 7% per annum. | Rs. | 2,100 |
| (d) He was provided with domestic servant whose monthly salary of Rs. 100 was paid by his employer. | | |

- (c) He was provided with a rent-free unfurnished accommodation in Cuttack for which monthly rent of Rs. 250 was paid by employer.

(Utkal University -M. Com.)

ANSWER

**Computation of total income for the year ended 31st March, 1970.
Assessment Year 1970-71.**

Net salary received	Rs.	9,500	
Add : Income-tax deducted at source		700	
Provident Fund Contribution of Sri Santi Sati Senapati deducted at source		1,800	Rs. 12,000

Employer's contribution to Recognised Provident Fund	Rs.	1,800	
Less : Non-taxable amount being 10% of Rs. 12,000		1,200	600

Interest on Provident Fund balance @ 7% per annum	Rs.	2,100	
Less : Proportionate non-taxable amount @ 6%		1,800	300

Rent-free unfurnished accommodation in Cuttack - 10% of Rs. 12,000	Rs.	1,200	
Add : (Rs. 3,000 less 20% of Rs. 12,000) i. e., Rs. 3,000 less Rs. 2,400		600	1,800

Gross Total Income			Rs. 14,700
Less : 60% of Rs. 1,800 being Prov. Fund contribution of Senapati			1,080

Total Income			Rs. 13,620

Note : The monetary equivalent of Free domestic servant is not taxable as the annual cash emoluments is less than Rs. 18,000. [Section 17(2)(iii)(c)]

Question No. 18.

Sri Sainen is an employee of a limited company getting a salary of Rs. 2,000 per month and rent-free unfurnished quarters. He gets free lunch during the office hours (estimated value of this amenity is Rs. 1,200). The annual premium on the assurance of his own life (Policy for Rs. 60,000 without profits) is Rs. 5,000 of which he pays Rs. 3,000 out of his salary and the company pays Rs. 2,000. Two gardeners are paid (Rs. 1,800) by the company

to maintain the compound of the house in which Sailen lives free of charge. He receives entertainment allowance from the company at Rs 6,000 p a since 1950. What would be the total income of Sailen, assuming that year of the income is 1969-70 ?

[Calcutta University—B. Com. (Hons.)]

(1) Estimated value of free lunch i.e. Rs 1,200 is taxable	
(2) Insurance premium of Rs 2,000 paid by the employer is a taxable perquisite	
(3) Salary of 2 gardeners i.e. Rs 1,800 paid by the company is not a taxable perquisite in the hands of the employee	
(4) Entertainment Allowance	Rs 6,000
Less 20% of salary i.e. Rs 24,000	4,800
	<hr/>
Taxable Allowance	Rs 1,200
(5) Value of rent-free unfurnished quarter (The amount of fair rent has not been mentioned)	
Salary	Rs 24,000
Taxable Entertainment Allowance	1,200
	<hr/>
	Rs 25,200
	<hr/>
10% of Rs 25,200	Rs 2,520
	<hr/>

Salary at Rs 2,000 per month	Rs 24,000
Estimated value of Free lunch	1,200
Entertainment Allowance	1,200
Value of Rent-free unfurnished quarter	2,520
Life Insurance Premium paid by the Company	2,000
	<hr/>
Gross Total Income	Rs 30,920
Less 60% of Rs 5,000 being Life Insurance Premium paid by Sri Sailen and his employer	3,000
	<hr/>
Total Income	Rs 27,920
	<hr/>

Question No. 19

Sri Nirmal, an employee of a company, who is married shows the following particulars of his income for the year ended 31st March, 1970—

(a) Salary—Rs 1,200 per month (b) The following amounts have been paid by the employer in addition to salary—

- (1) Rent-free unfurnished house at Rs 75 per month ;
- (2) Electric bills for Rs 500 (personal consumption) .
- (3) Insurance premium on assessee's life at Rs 100 per month ; (Policy for Rs 15,000 without profits)
- (4) Tuition fee for assessee's son amounting to Rs 1,000 ;
- (5) Car allowance amounting to Rs 1,200 (actual expenditure on car Rs 500) ;

- (6) Entertainment allowance amounting to Rs. 1,500 (regularly paid by the employer company since 1951).
Find out the taxable income.

[Calcutta University—B. Com. (Hons.)]

ANSWER

Computation of taxable income from salary of Sri Nirmal for the year ended 31st March, 1970 —Assessment year 1970-71.

Salary (at Rs. 1,200 p. m.	Rs.	14,400
Rent-free unfurnished accommodation		900
Electric bill paid by the employer		500
Insurance premium paid by the employer		1,200
Tuition fee for son paid by the employer		1,000
Entertainment allowance	Rs. 1,500	
Less: Admissible deduction	1,500	NIL
	--	
Car allowance (Rs. 1,200 less Rs. 500)		700
		--
Gross Total Income	Rs.	18,700
Less: 60% of Rs. 1,200 being Life Insurance Premium paid by the employer		720
		--
Total Income	Rs.	17,980

Question No. 20

Shri Rampada, an employee of New Tea Co Ltd shows the following particulars of his income earned in the financial year ended 31st March, 1970—

(i) Salary (including employee's contribution of Rs. 1,800 to a recognised provident fund)	Rs.	12,000
(ii) Dearness Pay		6,000
(iii) Employer's contribution to the provident fund		2,800
(iv) Interest on the accumulated balance in the provident fund—calculated at 9 per cent		3,600
(v) Car allowance (actual expense Rs. 900)		1,200
(vi) Club bills of the assessee paid by the employer		2,000
(vii) Entertainment allowance (the assessee was not in receipt of the entertainment allowance before 1st April, 1955)		400
(viii) Life Insurance premium on the life of Shri Rampada was paid by the employer.		3,000

Find out taxable income of Shri Rampada under salary.

[Calcutta University—B. Com. (Hons.)]

ANSWER**Computation of taxable income of Shri Rampada from salary for the year ended 31st March, 1970.- Assessment year 1970-71.**

Salary (including employee's contribution of Rs. 1,800 to a recognised provident fund)	Rs.	12,000
Dearness Pay		6,000
Employer's contribution to the provident fund (Rs. 2,800 less Rs. 1,800)		1,000
Interest on the accumulated balance in the provident fund (Excess over 6%)		1,200
Car allowance (Rs. 1,200 less actual expense Rs. 900)		300
Club bills of Shri Rampada paid by the employer		2,000
Entertainment allowance		400
Life Insurance premium paid by the employer		3,000
Gross Total Income	Rs.	25,900
Less : Contribution to Recog. Prov. Fund	Rs. 1,800	
Life Insurance Premium	3,000	
60% of	Rs. 4,800	2,880
Total Income	Rs.	23,020

- Notes :** (1) It is presumed that Life Insurance Policy is for more than Rs. 30,000.
 (2) As entertainment allowance was not received before 1st April, 1955, this will be taxed in full
 (3) Non-taxable portion of the Employer's contribution to the Provident Fund amounting to Rs. 1,800 represents 10% of Salary Rs. 12,000 and Dearness pay Rs. 6,000.

Question No. 21.

Sri Anil is the owner of a building at Rajpur which is mortgaged to Sri Bimal. The net municipal assessment of the building is Rs. 8,100. He incurs the following expenses during the year ending 31st March, 1970

(a) Repairs—Rs. 1,000 ; (b) Fire Insurance—Rs. 275 ; (c) Interest on mortgage Rs. 500 ; (d) Collection charges Rs. 600 , (e) Municipal tax Rs. 900.

The house was constructed in 1949. Rent amounting Rs. 8,500 was received for the year ending 31st March, 1970. Find out the net assessable income of Sri Anil.

[Calcutta University – B. Com. (Hons.)]

ANSWER**Computation of net assessable income of Sri Anil for the year ending 31st March, 1970 - Assessment year 1970-71.**

Gross annual value (being the greater of municipal value of Rs. 8,100 and actual rent of Rs. 8,500)	Rs.	8,500
Less : Municipal tax		900
Adjusted annual value		Rs. 7,600
Less : 1/6th for repair	Rs. 1,267	
Fire Insurance	275	
Collection charges		
(Upto 6% of Rs. 7,600)	456	1,998
Net assessable income (Rounded off)	Rs.	5,600

Note : With effect from the assessment year 1969-70 interest on mortgage is not an admissible expense unless the amount of mortgage is utilised for the construction of the house.

Question No. 22.

The following is the Profit and Loss a/c of Sri Roy for the year ending 31st March, 1970.—

To Rates and Taxes	Rs.	450	By Gross Profit	Rs.	14,623
„ Establishment		1,750	„ Bank Interest		577
„ Rent		600			
„ Household expenses		1,450			
„ Discount & Allowance		250			
„ Income-tax		480			
„ Advertisement		200			
„ Postage, Stationery & Printing		800			
„ Fire Insurance		150			
„ Gifts & Presents		160			
„ Charity		1,150			
„ Repairs		50			
„ Interest on Loan		2,500			
„ Reserve for Doubtful Debts		1,300			
„ Interest on capital		250			
„ Net profit		3,660			
	Rs.	15,200		Rs.	15,200

You are required to ascertain the taxable income for Sri Roy

[Calcutta University - B. Com. (Hons.)]

ANSWER

Computation of taxable income of Sri Roy for the year ended 31st March, 1970. -Assessment year 1970-71.

Net Profit as per Profit & Loss A/c	Rs.	3,660
Add : Household expenses	Rs.	1,450
Income-tax		480
Gifts & Presents		160
Charity		1,150
Reserve for doubtful debts		1,300
Interest on Capital		250
		4,790
Total taxable Income	Rs.	8,450

Question No. 23.

From the following Profit & Loss A/c of Sri Kamal Roy for the year ended 31st Dec. 1969 find out his taxable income from business.

To Salary, Bonus, etc.	Rs. 5,720	By Gross Profit	Rs. 28,635
.. General Charges	2,640	.. Interest on Govern-	
.. Interest on Bank Loan	480	.. ment Securities	1,660
.. Interest on Capital	1,580	.. Discount	365
.. Reserve for Doubtful Debts	835	.. Bad Debts recovered	440
.. Bad Debts	1,000	.. Profit on sale of long-	
.. Audit fee	300	.. term investments	750
.. Rent	2,030	.. Sundry receipts	350
.. Income-tax	1,760		
.. Charity	485		
.. Law Charges	370		
.. Compensation paid to a retrenched employee	1,500		
.. Extension of building	1,500		
.. Net Profit	12,000		
	Rs. 32,200		Rs. 32,200

In computing the income, the following facts should be taken into consideration—

- In the item of rent Rs. 600 is included in respect of the rent of the office building which belongs to the proprietor himself.
- In the amount of salaries Rs. 320 is included in respect of employer's contribution to provident fund which is recognised.
- General expenses include Rs. 350 in respect of new furniture purchased during the year.
- Amount of depreciation allowable according to rules works out at Rs. 1,275.
- Law charges include a sum of Rs. 100 being penalty imposed by Customs authorities.

[Calcutta University—B. Com. (Hons.)]

ANSWER

Computation of taxable income of Sri Kamal Roy from business for the year ended 31st December, 1969. Assessment year 1970-71

Net Profit as per Profit & Loss A/c		Rs. 12,000
Add Interest on Capital	Rs. 1,580	
Reserve for Doubtful Debts	835	
Income-tax	1,760	
Charity	485	
Extension of building	1,500	
Rent to self	600	
Law charges	100	
General expense for purchasing furniture	350	7,210
		Rs. 19,210
Less Interest from Government Securities	Rs. 1,660	
Profit on sale of Long-term investments	750	
Depreciation allowable	1,275	3,685
Taxable Income from business		Rs. 15,525

Question No. 24.

Shri A and Shri B are equal partners in a registered firm whose Profit and Loss Account for the year ended 31st December, 1969 is given below :

To Salaries, wages and bonus	Rs. 4,000	By Gross Profit	Rs. 37,000
General expenses	6,000	Bank Interest	1,000
Sales tax	1,500	Bad debt recovered	
Rent, rates & taxes	1,300	(disallowed in earlier	
Development rebate reserve	1,500	year's assessment)	600
Depreciation reserve on			
old plant and machinery	1,200		
Bad debts written off	300		
Doubtful debt reserve	800		
Advertising	2,000		
Subscription and charity	1,000		
Loss on sale of motor-car	2,000		
Interest on Capital :			
A—Rs. 1,500			
B— 1,500	3,000		

Partners' Salary :			
A—Rs. 1,200			
B— 1,800	3,000		

Commission to B	1,000		
Net Profit :			
A - Rs. 5,000			
B - 5,000	10,000		

	Rs. 38,600		

			Rs. 38,600

- Notes:** (i) General expenses include Rs. 200 being legal charges for drawing up a new partnership deed.
- (ii) Advertising represents Rs. 700 being cost of permanent sign-board and Rs. 1,300 being cost of insertions in trade journals.
- (iii) The motor-car is entirely used for private purposes of the partners.
- (iv) Subscription and charity include—
- (a) Rs. 200 to Trade Association. (b) Rs. 500 for refugees from East Pakistan, (c) Rs. 300 to a school.
- (v) (a) The written down value of old Plant and Machinery as on 1st January, 1969 comes to Rs. 5,000.
- (b) On the 31st December, 1968 a new Plant and Machinery amounting to Rs. 10,000 was purchased, installed and put into use.
- (c) Depreciation at 10 per cent is allowable on all Plant and Machinery.

Compute the assessable income of the firm and show the allocation between the partners.

ANSWER

**Computation of total income of the firm for the year ended 31.12.69.
Assessment Year 1970-71.**

Net Profit as per Profit and Loss Account			Rs.	10,000
Less : Bad debt recovered (taxed in an earlier year)				600

			Rs.	9,400
Add : General expense	Rs	200		
Advertising expense		700		
Loss on sale of motor-car		2,000		
Charity		800		
Development rebate reserve		1,500		
Depreciation reserve		1,200		
Doubtful debt reserve		800		7,200

			Rs.	16,600
Less : Depreciation				
10% of Rs. 5,000		500		
10% of 10,000		1,000		
Development rebate :				
20% of Rs. 10,000		2,000		3,500

			Rs.	13,100
Add : Salary paid to A	Rs.	1,200		
B		1,800		3,000

Interest paid to A	Rs.	1,500		
B		1,500		3,000

Commission paid to B		1,000		7,000

Total Income of the firm for Income-tax purposes			Rs.	20,100

Allocation to Partners :

	Total	A	B
Profit	Rs. 13,100	Rs. 6,550	Rs. 6,550
Salary	3,000	1,200	1,800
Interest	3,000	1,500	1,500
Commission	1,000	—	1,000
	-----	-----	-----
	Rs. 20,100	Rs. 9,250	Rs. 10,850
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Question No. 25.

Calculate the amount of depreciation admissible for the Assessment year 1970-71 in terms of Section 32 of the Indian Income-tax Act, 1961, on the basis of the following particulars—

- Ocean-going steamer : Actual cost Rs. 80,00,000 ; written down value on 1-4-69 Rs. 60,00,000 ; Rate of depreciation—5%
- Buildings : Actual cost Rs. 10,00,000 ; written down value on 1-4-69 Rs. 8,57,375 ; Addition on 1-7-69—Rs. 1,42,625 ; Rate of depreciation—5%

- (c) Motor Lorries : Actual cost Rs. 40,000 ; written down value on 1-4-69 Rs. 22,500 ; Additions 1-12-69--Rs. 50,000 ; Rate of depreciation --30%
- (d) Motor Car : Actual cost --Rs. 20,000 ; written down value on 1-4-69 --Rs. 12,800 ; Sold on 31-1-70 for Rs. 22,500 ; Rate of depreciation --20%
- (e) Typewriters : Actual cost --Rs. 1,200 ; written down value on 1-4-69 --Rs. 1,020 ; Additions on 15-3-70 --Rs. 1,280 ; Rate of depreciation --15%
- (f) Accounting Machine : Actual cost--Rs. 2,000 ; written down value on 1-4-69 --Rs. 1,700 ; Sold on 1-2-70 for Rs. 1,200 ; Rate of depreciation --15%

(Utkal University—M. Com.)

ANSWER

		Depreciation Admissible
(a) Ocean-going steamer :		
Actual cost	Rs. 80,00,000 at 5%	Rs. 4,00,000
(b) Building : Actual cost	Rs. 10,00,000	
Written down value on 1-4-69	8,57,375	
Addition on 1-7-69	1,42,625	
	Rs. 10,00,000 at 5%	Rs. 50,000
(c) Motor Lorries : Actual cost	Rs. 40,000	
Written down value on 1-4-69	22,500	
Additions on 1-12-69	Rs. 50,000	
	72,500 at 30%	Rs. 21,750
(d) Motor Car : Actual cost	Rs. 20,000	
Written down value on 1-4-69	12,800	
Sold on 31-1-70	Rs. 22,500	
Profit amounting to Rs. 7,200 (Rs. 20,000 less Rs. 12,800) is taxable as income under Section 41 (2) of the Income-tax Act, 1961. Profit amounting to Rs. 2,500 (Rs. 22,500 less Rs. 20,000) is taxable as "Capital Gains" under Section 45 (1) of the Income-tax Act, 1961.		
(e) Typewriters : Actual cost	Rs. 1,200	
Written down value on 1-4-69	Rs. 1,020	
Additions on 15-3-70	1,280	
	Rs. 2,300 at 15%	Rs. 345
(f) Accounting Machine : Actual cost	Rs. 2,000	
Written down value on 1-4-69	Rs. 1,700	

As the machine was sold depreciation is not admissible on percentage basis but the difference between the written down value and sale price (Rs. 1,700 less Rs. 1,200) i.e., Rs. 500 will be allowed as a deduction under Section 32(1)(iii) provided the amount is written off in the books of the assessee.

Question No. 26

Mr. Das Gupta, an individual having the status of a Resident and Ordinarily Resident, submits the following particulars of his salary income for the financial year 1969-70—

(i) Gross salary drawn	Rs. 15,000
(ii) Employer's contribution to recognised Provident Fund	1,200
(iii) His own contribution to Provident Fund	1,200
(iv) Hotel bills paid by the employer	800
(v) Life Insurance premium paid by the employer on his behalf (Policy amount Rs. 15,000)	1,200

The employer provided him with rent-free furnished quarter at Burdwan the fair rent of which is Rs. 200 per month and a car of 16 H. P. was provided for his use. The entire running expenses were paid by the employer.

Mr. Das Gupta spent Rs. 800 on books necessary for the purpose of his duties. He has paid himself Life Insurance premium Rs. 1,000 the capital sum assured being Rs. 20,000

Compute the total income under the head "Salaries".

[Burdwan University—B. Com. (Hons.)]

ANSWER

(1) Hotel bills paid by the employer is taxable as "Salary" in the hands of the employee.

(2) Life Insurance premium paid by the employer is taxable as "Salary" in the hands of the employee.

(3) The benefit arising out of the use of a car of 16 H.P. provided by the employer is taxable as "Salary" in the hands of the employee to the extent of Rs. 150 per month.

(4) The taxable monetary value of the rent-free furnished quarter at Burdwan should be computed as follows—

Salary	Rs. 15,000
12.5% of Rs. 15,000	Rs. 1,875

As the amount of rent paid i.e., Rs. 2,400 is more than 12.5% but less than 25% of the salary, the taxable monetary value of the rent-free furnished quarter should be computed at Rs. 1,875

(5) Expenses for purchase of books are limited to Rs. 500

**Computation of Salary income for the year ended
31st March, 1970—Assessment year 1970-71.**

Gross Salary paid by the employer		Rs.	15,000
Hotel bills paid by the employer			800
Life Insurance premium paid by the employer			1,200
Benefit arising out of the use of a car provided by the employer			1,800
Value of rent-free furnished quarter provided by the employer			1,875
		Rs	20,675
Less : Cost of books purchased			500
		Rs	20,175
Gross Total Income		Rs	20,175
Less : Prov. Fund Contribution	Rs	1,200	
Life Insurance premium paid by the employer		1,200	
Life Insurance premium paid by the employee		1,000	
60% of	Rs	3 400	2,040
Total Income		Rs	18 135
Rounded off		Rs	18,140

Question No. 27.

Mr. Banerjee and Mr Sircar run a wire-nail manufacturing industry on terms of equal partnership. For the year ended 31st December 1968, the business discloses a net profit of Rs. 40,500 after adjusting a depreciation of Rs. 10,200 in the Profit and Loss A/c

The P & L A/c reveals as follows—

(i) Furniture purchased on 1st July, 1968 debited	Rs	900
(ii) Bad debts written off Rs. 2,000 of which satisfactory evidence is available for		1 200
(iii) Partners' salaries equally for both		3 000
(iv) Interest on partners' Capital equally for both		1 500
(v) Installation cost of new plant debited to revenue A/c		600

The Balance Sheet shows the following asset position

(a) Plant & Machinery (written down value)	30 000
(b) New Plant and Machinery installed on 1st July 1968	12 400
(c) Motor lorry (written down value)	20,000
(d) Furniture and fixtures (written down value)	2,600

The assessee claims "Development Rebate". He further proves that an expense of Rs. 1,000 due on account of commission on sales was not accounted for due to oversight.

Compute the income of the firm for the relevant assessment year and show the allocation thereof between the partners.

ANSWER

**Computation for total income for the year ended
31st December, 1968—Assessment year 1969-70.**

Profit as per Profit & Loss A/c.			Rs. 40,500
Add : Depreciation to be considered separately	Rs. 10,200		
Furniture purchased	900		
Bad debts not proved	800		
Installation cost of new plant	600	12,500	
			Rs. 53,000
Less : Commission on sales due	Rs. 1,000		
Depreciation on assets			
Plants & Machinery	Rs. 30,000 @ 10%	3,000	
New Plant & Machinery	Rs. 12,400		
Cost of installation	600		
	Rs. 13,000 @ 10%	1,300	
Motor lorry	Rs. 20,000 @ 25%	5,000	
Furniture	Rs. 2,600		
Addition on 1.7.68	900		
	Rs. 3,500 @ 10%	350	10,650
			Rs. 42,350
Add : Salary paid to partners :			
Banerjee	Rs. 3,000		
Sircar	3,000	6,000	
Interest paid to partners :			
Banerjee	Rs. 1,500		
Sircar	1,500	3,000	
			9,000
Total Income of the firm for Income-tax purposes			Rs. 51,350

Allocation to Partners :

	Total	Banerjee	Sircar
Business profit	Rs. 42,350	Rs. 21,175	Rs. 21,175
Salary	6,000	3,000	3,000
Interest	3,000	1,500	1,500
	Rs. 51,350	Rs. 25,675	Rs. 25,675

- Notes :** (1) "Development Rebate" is admissible @ 20% of Rs. 13,400 i.e., Rs. 2,600 but as the assessee has not debited 75% of Rs. 2,600 to the Profit & Loss A/c the claim is disallowed [Section 34(3)(a)].
- (2) Depreciation on (a) new Plant and Machinery installed on 1st July, 1968 together with the cost of installation and (b) on furniture purchased on 1st July, 1968, has been calculated at the full rate as these have been used for more than 180 days during the accounting year ended 31st December, 1968.

Question No. 28.

Messrs. Adityanarayan, Brijmohan and Chiraranjan carried on hosiery goods business sharing profit and loss at 50%, 30% and 20% respectively. From the following Profit and Loss Account for the year ended 31st March, 1970, compute the total income of the firm and allocate the same amongst the partners.

Office Rent paid to Brijmohan	Rs. 6,000	Gross profit	Rs. 1,40,000
Staff salary	8,000	Dividends less	
Advertisement	4,000	tax deducted at	
Postage and telegram	2,000	source @ 20%	12,000

Salary paid to :

Adityanarayan	Rs. 3,000	
Brijmohan	9,000	
Chiraranjan	6,000	18,000

Interest paid to :

Adityanarayan	4,500	
Brijmohan	3,000	
Chiraranjan	1,500	9,000

Donation to Jawahar Lal
Nehru Memorial Fund

5,000

Speculation loss

30,000

Net profit :

Adityanarayan	Rs. 35,000	
Brijmohan	21,000	
Chiraranjan	14,000	70,000

Rs. 1,52,000

Rs. 1,52,000

ANSWER

Computation of total income for the year ended 31st March, 1970.

Assessment year 1970-71.

	Adityanarayan 50%	Brijmohan 30%	Chiraranjan 20%
Profit as per Profit & Loss A/c	P.L. 70,000		
Add : Donation	5,000		
Speculation loss	30,000		
	Rs. 1,05,000		
Less : Dividends credited to Profit & Loss A/c.	12,000		
	Rs. 93,000	Rs. 46,500	Rs. 27,900
Add : Salary paid	18,000	3,000	9,000
Interest paid	9,000	4,500	3,000
	Rs. 1,20,000	Rs. 54,000	Rs. 39,900
Business Profit	15,000	7,500	4,500
Dividends (Gross)			3,000
Gross Total Income	Rs. 1,35,000	Rs. 61,500	Rs. 44,400
			Rs. 29,100

Brought Forward	Rs. 1,35,000	Rs. 61,500	Rs. 44,400	Rs. 29,100
Less : Deduction for Dividends (Section 80 L) Donation (Sec- tion 80 G) @ 55% of Rs. 5,000	1,000	500	300	200
	2,750	1,375	825	550
Total Income	Rs. 1,31,250	Rs. 59,625	Rs. 43,275	Rs. 28,350
Speculation loss carried forward	Rs. 30,000	Rs. 15,000	Rs. 9,000	Rs. 6,000
Tax deducted A/c. Dividend	Rs. 3,000	Rs. 1,500	Rs. 900	Rs. 600

Question No. 29.

From the following Profit and Loss Account for the year ended 31st December, 1969 of Alpha Brooke Company (Private) Limited, compute its total income.

To Staff Salary	Rs. 37,000	Gross profit	Rs. 3,80,000
General charges	8,000		
Rates & taxes	4,000		
Repairs	20,000		
Legal charges	8,000		
Advertisements	5,000		
Director's Remuneration	48,000		
Depreciation @ 10% (as per I. Tax Rules)	50,000		
Net profit	2,00,000		
	Rs. 3,80,000		Rs. 3,80,000

Additional Particulars.

1. General charges include donation to Jawahar Lal Nehru Memorial Fund Rs. 5,000.
2. Repairs include Rs. 15,000 for improvement of machineries.
3. Legal charges include Rs. 1,000 for the renewal of the Factory Lease.
4. Director's remuneration include bonus of Rs. 12,000 paid to a Director who holds 30% of the total capital.

ANSWER

**Computation of total income for the year ended 31st December, 1969.
Assessment year 1970-71.**

Profit as per Profit and Loss A/c.		Rs. 2,00,000
Add : Depreciation	Rs. 50,000	
Donation	5,000	
Capital expenditure	15,000	
Renewal of lease	1,000	71,000
Carried over		Rs. 2,71,000

Brought Forward		Rs. 2,71,000
Less : Depreciation as per		
I. Tax Rules @ 10%	Rs. 50,000	
Expenses Debited to		
repairs 10% of Rs. 15,000	1,500	51,500
		<u>Rs. 2,19,500</u>

Add : Remuneration paid to Director

If the bonus of Rs. 12,000 had not been paid to the Director, a part of it would have been received by him as dividend. Under Section 36 (1) (ii) of the Income-tax Act, 1961 such part of the bonus to the Director is worked out as below—

Income of the company computed earlier	Rs. 2,19,500
Less : 50% of the Donation to Jawahar Lal	
Nehru Memorial Fund (Section 80G)	2,500
	<u>Rs. 2,17,000</u>
Less : Income-tax @ 65% of Rs. 2,17,000	1,41,050
	<u>Rs. 75,950</u>

This sum of Rs. 75,950 less Rs. 19,500 (Rs. 2,19,500 less Rs. 2,00,000) (disallowed for income-tax purposes) i.e., Rs. 56,450 could have been distributed as dividend. The Director in question having 30% of the total voting power on the shares would have been entitled to get

$$\frac{30 \times \text{Rs. } 56,450}{100} = \text{Rs. } 16,935$$

Therefore the entire amount of Rs. 12,000 should be disallowed.

The total income, therefore, comes to Rs. 2,19,500 plus Rs. 12,000 or Rs. 2,31,500.

Question No. 30.

Shri X, an Indian national, is a Resident and Ordinarily Resident. He works as the Director of a Mill Company in Bombay. He has furnished the following particulars for the Assessment year 1970-71—

- (i) Salary Rs. 30,000 (out of this sum, a sum of Rs. 5,000 being salary for two months drawn in London, as the assessee went to England on official duty for two months)
- (ii) Sitting fees Rs. 1,000
- (iii) Company's contribution to Provident Fund Rs. 4,000
- (iv) Interest on Provident Fund at 6 per cent Rs. 12,000
- (v) Assessee's contribution to Provident Fund Rs. 4,000 [included in the sum of Rs. 30,000 shown at (i)]
- (vi) Life Insurance premium on own life for policy of Rs. 80,000—Rs. 6,000
- (vii) Entertainment allowance paid since 1950 by employer Rs. 8,500

The company has provided him with rent-free unfurnished house at Bombay owned by the company of the annual municipal valuation of Rs. 12,000. Besides the company has incurred the following expenses on the house and establishment—

- (i) Repairs Rs. 25,000
- (ii) Pay of cook and bearer Rs. 3,000
- (iii) Pay of Mali Rs. 1,200
- (iv) Garden expenses Rs. 2,400

Compute the total income of Shri X giving brief reasons for the inclusion or omission of different items.

[Calcutta University—B. Com. (Hons.)]

ANSWER

- (1) Salary drawn in London by a "Resident and Ordinarily Resident" is taxable in full.
- (2) Company's contribution to a recognised Provident Fund in excess of 10% of salary is taxable.
- (3) Interest on Provident Fund in excess of one-third of salary is taxable.
- (4) Assessee's contribution to Provident Fund and Life Insurance premium (Rs. 4,000 Plus Rs. 6,000) i.e., Rs. 10,000 are eligible for deduction from the total income as follows—

60% of Rs. 5,000	Rs. 3,000
50% of 5,000	2,500
	Rs. 5,500

- (5) Entertainment allowance paid since 1950 is exempt up to a maximum of Rs. 6,000 (20% of Rs. 30,000)
- (6) Pay of cook and bearer amounting to Rs. 3,000 is taxable as perquisite in the hands of Shri X
- (7) Taxable benefit in respect of rent-free unfurnished house at Bombay owned by the company will be calculated as follows—

Annual Municipal Valuation	Rs. 12,000
Less : 30% of Salary—Rs. 30,000 and taxable entertainment allowance Rs. 2,500 i.e., Rs. 32,500	9,750
	Rs. 2,250
Add : 10% of Salary and taxable entertainment allowance	3,250
	Rs. 5,500

- (8) Repairs, pay of Mali and Garden expenses are not taxable perquisites in the hands of Shri X.

Computation of total income of Shri X for the Assessment year 1970-71.

Salary		Rs. 30,000
Company's contribution to Prov. Fund	Rs. 4,000	
Less : 10% of salary	3,000	1,000
Interest on Provident Fund @ 6%	Rs. 12,000	
Less : One-third of salary	10,000	2,000
Entertainment allowance	Rs. 8,500	
Less : Admissible deduction	6,000	2,500
Carried over		Rs. 35,500

Brought Forward	Rs. 35,500
Pay of cook and bearer	3,000
Rent-free unfurnished quarter	5,500
Sitting fees	1,000
Gross Total Income	Rs. 45,000
Less : Life Insurance premium and Provident Fund contribution	5,500
Total Income	Rs. 39,500

Question No. 31.

S, a salaried employee in F. Co. Ltd. and an Indian citizen, gets a salary of Rs. 3,500 per month. He is given a car of 15 H. P. which he uses for official work as well as for his personal matters. The company maintains the car and provides all the running expenses. S is a member of a recognised Provident Fund maintained by his employer and for the year ended on 31st March 1970 the employer's contribution, the employee's contribution and the interest credited @ 8% per annum to S's Provident Fund account amounted to Rs. 5,250, Rs. 5250 and Rs. 4,800 respectively.

In terms of his service S is required to entertain the clients of F. Co. Ltd. and he gets an allowance of Rs. 750 per month for this purpose. He has been serving with F. Co. Ltd. since 1948 and has always been in receipt of an identical allowance for entertaining clients.

The company provides him with rent-free furnished accommodation in Calcutta and pays a rent of Rs. 1,800 per month to the owner of such accommodation.

During the year to 31st March, 1970 S paid Life Insurance premium of Rs. 4,000 on a policy of Rs. 1,00,000 taken out on his own life.

Assuming that S has no income except that from his employment with F. Co. Ltd. during the year ended 31st March, 1970, compute his total income for the Assessment year 1970-71.

[Calcutta University—B. Com. (Hons.)]

ANSWER

**Computation of total income for the year ended
31st March, 1970—Assessment year 1970-71.**

Salary for the year ended 31. 3. 70	Rs. 42,000
Taxable perquisite in respect of car @ Rs. 150 p.m.	1,800
Employer's contribution to P. Fund.	Rs. 5,250
Less : 10% of salary	4,200
	1,050
Interest credited to P. Fund @ 8%	Rs. 4,800
Less : Proportionate amount @ 6%	3,600
	1,200
Entertainment allowance	Rs. 9,000
Less : Admissible deduction	7,500
	1,500
Rent-free furnished accommodation	10,725
Gross Total Income	Carried over
	Rs. 58,275

	Brought Forward	Rs. 58,275
Less : Life Insurance premium of Rs. 4,000 plus		
Provident Fund contribution of Rs. 5,250		
60% of Rs. 5,000	Rs. 3,000	
50% of 4,250	2,125	5,125
Total Income		Rs. 53,150

- Notes :** (1) As the car is less than 16 H. P., the taxable perquisite will be Rs. 150 per month.
 (2) Employer's contribution in excess of 10% of salary is taxable.
 (3) Interest credited to a recognised Provident Fund in excess of 6% is taxable.
 (4) Admissible deduction in respect of entertainment allowance is limited to 20% of salary or Rs. 7,500 whichever is less.
 (5) Taxable perquisite in respect of rent-free furnished accommodation has been calculated as follows—
- | | |
|---------------------------------|------------|
| Salary | Rs. 42,000 |
| Taxable Entertainment allowance | 1,500 |
| | Rs. 43,500 |

Rent paid to the landlord at Rs. 1,800 per month	Rs. 21,600
Less : 37.5% of Rs. 43,500	16,313
	Rs. 5,287
Plus : 12.5% of Rs. 43,500	5,438
	Rs. 10,725

Question No. 32.

Ray's Estate and Property, a firm, is the owner of a house property in Calcutta. The house was built in 1952. It has been let out for Rs. 95,000. The municipal tax payable by it comes to Rs. 10,000 but it has taken an agreement from the tenant stating that the tenant would pay the tax direct to the municipality. The firm, however, bears the following expenses on tenant's amenities—

Water charges	Rs. 2,000
Lift maintenance	1,000
Salary of gardener	1,200
Lighting of stairs	800

The firm claims the following deductions—

Repairs	Rs. 30,000
Land revenue	1,000
Collection charges	2,000
Legal charges for acquisition of land	24,000

Compute the income from the house property for the Assessment year 1970-71.

[Calcutta University—B. Com. (Hons.)]

ANSWER

**Computation of taxable income from House property
for the Assessment year 1970-71**

Rental value of the property		Rs.	95,000
Less : Water charges	Rs.	2,000	
Lift maintenance		1,000	
Salary of gardener		1,200	
Lighting of stairs		800	5,000
			<hr/>
Adjusted annual value		Rs.	90,000
Less : Statutory allowance for repair	Rs.	15 000	
Land revenue		1,000	
Collection charges		2,000	18,000
			<hr/>
Taxable income from House property		Rs.	72,000
			<hr/>

- Notes :** (1) Legal charges for acquisition of land is not an admissible expense under Section 24 of the Income-tax Act, 1961.
(2) With effect from the assessment year 1969-70 municipal tax paid by the tenants should be ignored for adjustment of the annual value.

Question No. 33.

Shri Ram Lal (unmarried) owns several properties in Calcutta the rental value of which amounts to Rs 25,000 including Rs 7,000 for a bungalow, where he resides. He claims the following expenses -

Insurance premium	Rs	100
Interest on mortgage		700
Vacancy allowance		500
Ground rent		25
Land revenue		10
Rent collection charges		1,200
Municipal taxes for properties let		3,000

Ascertain his taxable income for the Assessment year 1970-71 assuming that he has no other income

[Calcutta University—B. Com. (Hons.)]

ANSWER

Computation of taxable income for the Assessment year 1970-71.

Rental value of the properties		Rs.	25,000
Less : Rental value of residential house			7,000
			<hr/>
Rental value of let out houses		Rs.	18,000
Less : Municipal taxes			3,000
			<hr/>
Net Rental value of let out houses	Carried over	Rs.	15,000

	Brought Forward	Rs. 15,000
Less : 1/6th for repair	Rs. 2,500	
Insurance premium	100	
Vacancy allowance	500	
Ground rent	25	
Land revenue	10	
Collection charges limited to 6% of Rs. 15,000	900	
		4,035
		Rs. 10,965
Residential House.		
Rental value	Rs. 7,000	
Less : 50% of the rental value with a maximum of	1,800	
	Rs. 5,200	
but limited to 10% of Rs 10,965	Rs 1,096	
Less: 1 6th for repair	183	913
Taxable income for the Assessment year 1970-71		Rs. 11,878
Rounded off		Rs. 11,880

- Notes :** (1) With effect from the assessment year 1969-70 the entire amount of municipal tax paid by the owner in respect of properties let out is an admissible deduction.
- (2) With effect from the assessment year 1969-70 interest on mortgage is not an admissible deduction unless the amount of mortgage loan is utilised for the construction or reconstruction of the house

Question No. 34.

Given below is the Profit and Loss Account of Sri Durga Cotton Mill for the year ended 31st March, 1970. Shri A is the sole proprietor of the Mill.

To Opening Stock	Rs. 5,00,000	By Sales	Rs. 81,00,000
„ Purchase of raw cotton etc.	55,00,000	„ Rent of Staff Quarter (built in 1958)	37,000
„ Railway freight, octroi etc.	6,00,000	„ Closing stock	8,00,000
„ Salaries and wages	14,50,000		
„ Audit fee	10,000		
„ Legal expenses	50,000		
„ Repairs to building and machinery	14,000		
„ Staff welfare expenses	10,000		
„ General charges	25,000		
„ Development rebate Reserve	3,000		
„ Interest paid on Bank overdraft etc.	2,00,000		
Carried over	Rs. 83,62,000	Carried over	Rs. 89,37,000

	Brought Forward	Rs. 83, 2,000	Brought Forward	Rs. 89,37,000
To	Commission for raising loan	10,000		
„	Reserve for doubtful debts	5,000		
„	Bad debts written off	40,000		
„	Depreciation	10,000		
„	Interest on Shri A's capital	27,000		
„	Rent of business Premises belonging to Sri A	16,000		
„	Donation to the University	1,25,000		
„	Contribution to Staff Welfare Fund	60,000		
„	Provision for income-tax	50,000		
„	General reserve	40,000		
„	Net profit	1,92,000		
		<hr/> Rs. 89,37,000		<hr/> Rs. 89,37,000

You are required to compute Shri A's taxable income from business for the Assessment year 1970-71 after taking into account the following information—

(a) A sum of Rs. 5,000 on account of liability foregone by a creditor has been carried to a special reserve. The said sum was charged by the proprietor in the revenue account of the preceding year.

(b) General charges include—

(i) Rs. 7,000 Emergency Insurance Risk Premium

(ii) Rs. 1,000 donation to Flood Relief Fund

(iii) Rs. 2,000 family planning expenditure amongst employees.

(c) Staff welfare expenses include Rs. 1,500 being cost of pucca well built for use by the workers.

(d) Legal expenses include Rs. 500 paid to a chartered accountant for conducting income-tax appeal and Rs. 2,000 (paid to an advocate) in connection with prosecution of Shri A for smuggling goods from Pakistan. A profit of Rs. 20,000 was made on these smuggled goods.

(e) Repairs to building include Rs. 10,000 being cost of additions to business premises.

(f) Depreciation allowable is Rs. 8,000 including depreciation on new plant and machinery (costing Rs. 20,000) which was installed on 1st July, 1969 and put into use on the same date.

[Calcutta University—B. Com. (Hons.)]

ANSWER

**Computation of total income for the year ended
31st March, 1970—Assessment year 1970-71.**

Net profit as per Profit & Loss A/c		Rs. 1,92,000
Add :		
Development rebate reserve	Rs. 3,000	
Reserve for doubtful debts	5,000	
Depreciation	10,000	
Interest on Shri A's capital	27,000	
Rent of business premises belonging to Shri A.	16,000	
Donation to the University	1,25,000	
	<hr/>	<hr/>
Carried over	Rs. 1,86,000	Rs. 1,92,000

Brought Forward	Rs. 1,86,000	Rs. 1,92,000
Donation to Flood Relief Fund	1,000	
Contribution to Staff Welfare Fund	60,000	
Provision for income-tax	50,000	
General reserve	40,000	
Staff Welfare expenses being cost of pucca well	1,500	
Legal Expense for conducting income-tax appeal	500	
Additions to business premises	10,000	
Liability foregone by a creditor	5,000	
Family planning expenditure	2,000	3,56,000
		<hr/>
		Rs. 5,48,000
Less : Depreciation on machinery	Rs. 8,000	
Development rebate @ 20% of Rs. 20,000	4,000	12,000
		<hr/>
Gross Total Income		Rs. 5,36,000
Less : Deduction for Donation—55% of Rs. 1,26,000 but limited to Rs. 53,600 (10% of Rs. 5,36,000)		7 29,480
		<hr/>
Total Income		Rs. 5,06,520

- Notes :**
- (1) Liability foregone by a creditor is taxable in terms of Section 41 (1).
 - (2) Emergency Insurance Risk premium is an admissible expense.
 - (3) Donations to the University and Relief Fund are not admissible deductions.
 - (4) Expenditure for family planning among employees is an admissible deduction for income-tax purposes in the case of a Company. In this case the amount is not admissible.
 - (5) Cost of pucca well built for use of the workers is disallowed as "Capital expenditure."
 - (6) Legal expenses for conducting income-tax appeal is not admissible.
 - (7) In computing profits from an illegal business, the expenses incurred in the running of the business would be allowed. Rs. 2,000 paid to an advocate in connection with prosecution of Shri A for smuggling goods from Pakistan (in respect of which a profit of Rs. 20,000 was made) would be allowed [Vide I.T.R., Vol. 49 (1963), page 951] [Bombay High Court decision].
 - (8) Cost of addition to business premises is not an admissible expense.
 - (9) Commission for raising a loan is an admissible expense according to Hon'ble Supreme Court's decision in India Cements Ltd. Vs. Commissioner of Income-tax, Madras [Vide I.T.R., Vol. 60 (1961), page 52]
 - (10) Interest and rent paid to the proprietor, Shri A are not admissible deductions.
 - (11) Contribution to Staff Welfare Fund, Provision for Income-tax and General Reserve are not admissible expenses.

Question No. 35.

The profit and loss Account of Mr. Das Gupta carrying on business for the year ended 30th September, 1969 is reproduced below.

Dr.			Cr.	
To Opening stock	Rs.	30,000	By Sales	Rs. 2,38,000
„ Purchases		1,80,000	„ Purchases returns	2,000
„ Sales returns		3,000	„ Closing stock	39,000
„ Rent and taxes		3,100		
„ Stationery		1,200		
„ Advertisement		700		
„ Proprietor's remuneration		6,000		
„ Salaries		4,500		
„ Depreciation		6,300		
„ Office expenses		2,200		
„ Net profit transferred to Capital A/c.		41,900		
	Rs.	2,79,000		Rs. 2,79,000

The income-tax record of Mr. Das Gupta reveals the following facts—

Written down value of assets at the end of the last year's assessment as stated below—

(i) Plant & Machinery	Rs. 25,000
(ii) Furniture	5,400
(iii) Motor Lorry	16,000

On examination of evidence it is found that—

- The assessee has installed a new plant and machinery on 1st April, 1969, the cost of which is Rs. 20,000
- Rent and taxes include payment of income-tax Rs. 1,300.
- A consignment of goods valued at cost Rs. 4,000 has been sent to an agent for sale and it is shown in Suspense a/c. in the Balance-Sheet.

Ascertain the total income of Mr. Das Gupta.

[Burdwan University—B. Com. (Hons.)]

ANSWER

Computation of total income for the year ended 30th September, 1969—Assessment year 1970-71.

Profit as per Profit and Loss A/c.		Rs. 41,900
Add : Income-tax paid	Rs. 1,300	
Proprietor's remuneration	6,000	
Depreciation to be considered separately	6,300	
Goods sent on consignment not included in closing stock	4,000	17,600
Carried over		Rs. 59,500

	Brought Forward		Rs. 59,500
Less : Depreciation			
Plant & Machinery	Rs. 25,000 @10%	Rs. 2,500	
Additions on 1.4.68	20,000 @10%	2,000	
Furniture	Rs. 6,400 @10%	640	
Motor Lorry	Rs. 16,000 @30%	4,800	9,940
Total Income of Mr. Das Gupta			Rs. 49,560

Question No. 36

X, a resident Indian citizen and employed as an Accountant in a mercantile firm at Calcutta, gives, the following particulars of his income for the year ended on 31st March, 1970—

Net salaries after all deductions at source	Rs. 12,600
Deductions at source—	
(i) Income-tax	Rs. 3,000
(ii) Loan repayment to Co-operative Society	6,000
(iii) Contribution to a recognised Provident Fund	2,400
Employer's contribution to the recognised Provident Fund	2,400
Interest credited to the Provident Fund account of X (Calculated @ 8% per annum)	3,200

- During the year he occupied a house provided to him rent-free and fully furnished by employer. The house was taken on rent by the employer, the monthly rent being Rs. 750.
- X was also given free use of a 12 H.P. motor car for official as well as private purposes. The running and maintenance costs were paid by the employee.
- Under the contract of service the employer also paid X's life insurance premium of Rs. 5,000.
- X was required to be fully up-to-date in matters concerning income-tax law and company law, and for this purpose he had to purchase during the year books on those subjects for which the cost was Rs. 800.

Assuming that X had no other source of income, compute his total income for the Assessment year 1970-71.

(Burdwan University—M. Com.)

ANSWER

(1) Basic Salary has been calculated as follows—

Net Salary after deductions		Rs. 12,600
Add : Income-tax	Rs. 3,000	
Loan Repayment	6,000	
Con. to Recog. P. Fund	2,400	11,400
		Rs. 24,000

(2) Taxable Monetary equivalent of 12. H. P. motor car provided by the employer for official as well as private purposes, the running and maintenance costs being borne by the employee—Rs. 60 per month.

(3) Life Insurance Premium of Rs. 5,000 paid by the employer will be treated as a taxable perquisite in the hands of Mr. X.

(4) The maximum amount admissible towards cost of books is Rs. 500 only.

(5) The taxable perquisite in respect of Rent-free furnished Quarter is calculated as follows—

Rent paid for the year	Rs. 9,000
Less : 37.5% of Salary	9,000

	Nil
Add : 12.5% of Salary	Rs. 3,000

	Rs. 3,000

**Computation of total income of Mr. X for the year ending
31st March, 1970 -Assessment year 1970-71.**

Basic Salary		Rs. 24,000
Employer's contribution to Recognised Prov. Fund	Rs. 2,400	
Less : 10% of Basic Salary	2,400	Nil
Interest Credited @ 8%	Rs. 3,200	
Less : Admissible @ 6%	2,400	800
Motor Car—12 H. P.		720
Rent-Free furnished Quarter		3,000
Insurance Premium paid by the Employer		5,000

		Rs. 33,520
Less : Cost of books		500

Gross Total Income		Rs. 33,020
Less : Contribution to Recog. Prov. Fund	Rs. 2,400	
Life Insurance Premium (Policy amount presumed to be more than Rs. 50,000)	5,000	

	Rs. 7,400	

60% of Rs. 5,000	Rs. 3,000	
50% of 2,400	1,200	4,200
	-----	-----
Total Income		Rs. 28,820

Question No. 37.

Manufacture Ltd., purchased two new machines A and B for Rs. 1,00,000 and Rs. 2,00,000, on 2nd January, 1966 and 1st March 1966 respectively. Machine A was brought into use from 1st April 1966 while the other machine

started working on 1st June, 1966. Before those could be brought into use, installation costs of Rs. 10,000 and Rs. 12,000 respectively had to be incurred thereon. On 30th September, 1968 a fire broke out in the factory premises. Machine A was completely destroyed and Machine B was partially damaged. Machine A was insured and the Insurance Company paid a sum of Rs. 70,000 on the Policy. Machine B, however, was not insured. It was sold for Rs. 80,000. Assuming that the factory had worked single shift only throughout the years 1966, 1967 and 1968 and further that rates of depreciation and development rebate are 10% and 20% respectively, calculate all the allowances in respect of the two machines separately, for the Assessment years 1967-68, 1968-69 and 1969-70. The Company's accounting years are calendar years.

(Burdwan University—M. Com.)

ANSWER

	Machine A
Cost of the Machine	Rs. 1,00,000
Installation Cost	10,000
	<hr/>
	Rs. 1,10,000
Depreciation for the period 1.4.66 to 31.12.66 Assessment year 1967-68 Rate 10%	11,000
	<hr/>
Written down value on 1.1.67	Rs. 99,000
Depreciation for the period 1.1.67 to 31.12.67 Assessment year 1968-69 Rate 10%	9,900
	<hr/>
Written down value on 1.1.68	Rs. 89,100
On 30th September, 1968 the machine was destroyed by fire Insurance value realised	70,000
	<hr/>
Balancing charges admissible for the Assessment year 1969-70 [Section 32(1) (iii)]	Rs. 19,100
	<hr/>
Development Rebate admissible for the Assessment year 1967-68 @ 20% of Rs. 1,10,000	Rs. 22,000
	<hr/>
	Machine B
Cost of the machine	Rs. 2,00,000
Installation Cost	12,000
	<hr/>
	Rs. 2,12,000
Depreciation for the period 1.6.66 to 31.12.66 Assessment year 1967-68 Rate 10%	21,200
	<hr/>
Written down value on 1.1.67	Rs. 1,90,800
Carried over	

Brought Forward	Rs. 1,90,800
Depreciation for the period 1.1.67 to 31.12.67	
Assessment year 1968-69	
Rate 10%	19,080
Written down value on 1.1.68	Rs. 1,71,720
On 30th September, 1968 the machine was damaged by fire. Scrap value	80,000
Balancing charges admissible for the Assessment year 1969-70 [Section 32(1) (iii)]	Rs. 91,720
Development Rebate admissible for the Assessment year 1967-68 @ 20% of Rs. 2,12,000	Rs. 42,400

As the machine was sold within 8 years from the date of installation, the Development Rebate allowed in the Assessment year 1967-68 will be disallowed and the total income will be recomputed in the Assessment year 1969-70. [Section 155 (5)]

Question No. 38.

A, B & C are active partners in firm of cloth dealers. The firm's profit and loss account for the year ended 31st March, 1970 is appended below. Compute the total income of the firm for income-tax purposes and allocate the same amongst the partners.

To Salaries	Rs. 12,000	By Gross Profit	Rs. 81,000
„ Rent, Rates & Taxes	5,000	„ Profit arising from	
„ Rent paid to B	500	sale of long-term	
„ Income-tax	2,700	Capital assets—	
„ Advertisement	1,200	comprising of lands.	25,000
„ Postage & Telegram	1,800		
„ Reserve for doubtful debts	1,200		
„ Purchase of Machinery	2,000		
„ Penalty for smuggling			
goods from Pakistan	2,100		
„ Legal Expenses relating to smuggled goods	2,300		
„ Charity	200		
„ Salary to partners			
A Rs. 7,200			
B 4,800			
C 2,400	14,400		
„ Interest on Capital			
A Rs. 2,400			
B 1,200			
C 3,000	6,600		
„ Net Profit			
A (1/3) Rs. 27,000			
B (1/3) 18,000			
C (1/3) 9,000	54,000		
	Rs. 1,06,000		Rs. 1,06,000

ANSWER**Computation of total income for the year ended
31st March, 1970—Assessment year 1970-71**

Net Profit as per Profit & Loss A/c		Rs. 54,000
Less : Profit arising from sale of Long-term Capital assets to be considered separately		25,000
		<u>Rs. 29,000</u>
Add : Penalty for smuggling Goods from Pakistan	Rs. 2,100	
Income-tax	2,700	
Legal Expenses regarding smuggled Goods	2,300	
Reserve for doubtful Debts	1,200	
Purchase of Machinery	2,000	
Charity	200	10,500
		<u>Rs. 39,500</u>
Salary paid to Partners		14,400
Interest paid to Partners		6,600
		<u>Rs. 60,500</u>
Business Profit		Rs. 60,500
Long-term Capital Gains—Comprising of lands		11,000
		<u>Rs. 71,500</u>
Total Income		<u>Rs. 71,500</u>

Allocation to Partners	Total	A	B	C
Business Profit	Rs. 39,500	Rs. 19,750	Rs. 13,167	Rs. 6,583
Salary	14,400	7,200	4,800	2,400
Interest	6,600	2,400	1,200	3,000
	<u>Rs. 60,500</u>	<u>Rs. 29,350</u>	<u>Rs. 19,167</u>	<u>Rs. 11,983</u>
Long-term Capital Gains	11,000	5,500	3,667	1,833
	<u>Rs. 71,500</u>	<u>Rs. 34,850</u>	<u>Rs. 22,834</u>	<u>Rs. 13,816</u>

Notes : (1) Penalty amounting to Rs. 2,100 and Legal Expenses amounting to Rs. 2,300 incurred for smuggling goods from Pakistan are not admissible. [Vide I.T.R. Vol. 41 (1961) page 350] [Supreme Court decision]

(2) Profits arising from sale of "Long term" Capital asset comprising of lands (Section 80T) Rs. 25,000

Less : 100% of	Rs. 5,000	Rs. 5,000	
45% of	20,000	9,000	14,000
			<u>Rs. 11,000</u>

Question No. 39.

The following is the Trading and Profit and Loss Account of a Limited Company for the year ended 31.3.69. The Company is a dealer in Textile ;

TRADING ACCOUNT

To Opening Stock	Rs. 75,000	By Sales	Rs. 13,50,000
" Purchases	10,00,000	" Closing Stock	50,000
" Freight	7,000		
" Customs Dept.	50,000		
" Gross Profit	2,68,000		
	<hr/>		<hr/>
	Rs. 14,00,000		Rs. 14,00,000

PROFIT AND LOSS ACCOUNT

To Salaries to establishment	Rs. 60,000	By Gross profit	Rs. 2,68,000
" Rent	12,000	" Interest	10,000
" Rates and Taxes	10,000	" Dividend	6,000
" Interest	50,000		
" Depreciation	5,000		
" Development Rebate Reserve	4,000		
" Interim Dividend Paid	20,000		
" Miscellaneous Expenses	60,000		
" Net Profit	63,000		
	<hr/>		<hr/>
	Rs. 2,84,000		Rs. 2,84,000

The following facts are available from the records—

(a) Closing stock has been valued at market rates which was less than the cost by 10%. The closing stock valuation in the preceding year has been at cost.

(b) Purchases include Rs. 1 lakh advanced to a Textile Mill against supply of cloth agreed to be delivered in April, 1969.

(c) To the Custom department a penalty of Rs. 30,000 was paid for violation of import quota rules. This is included in Rs. 50,000 debited to the Trading Account.

(d) Salaries include Rs. 36,000 paid to the Managing Director, of this Rs. 24,000 represented salary for the period 1.4.68 to 31.3.69. Rs. 10,000 as motor car advance, and Rs. 2,000 paid in March, 1969 as grant towards his children's education.

(e) Rates and taxes include Rs. 3,000 paid as advance income-tax.

(f) Interest receipts include Rs. 4,000 as interest received on tax-free security of Central Government. Interest payment of Rs. 50,000 is towards the unpaid balance of purchase price to the vendor from whom the business was purchased by the company as going concern.

(g) Development rebate reserve is 75 per cent of the amount of Development Rebate claimed on electric computers and typewriters.

(h) Miscellaneous expenditure includes Rs. 30,000 paid as bonus to staff. This bonus related to 1965-66 but was settled by agreement in February, 1969.

(i) Dividend receipt is from an Indian Company which has started a new industrial undertaking.

(j) No dividend is declared by the company. The interim payment of Rs. 20,000 by the directors was approved.

Compute the total income of the company for 1969-70. State briefly your reasons for including or excluding any item.

ANSWER

(1) According to Hon'ble Allahabad High Court in *Ram Luxman Sugar Mills Vs Commissioner of Income-tax U. P.* (as reported in *Income-tax Reports*, Vol. 63 (1967) page 51) an assessee is entitled to value the closing stock of any accounting year either at cost price or market value, whichever is lower. Though the value of the closing stock must be the value of the opening stock in the succeeding year the rate to be applied need not be the same for the opening stock and closing stock of the same accounting year. In this case, therefore, no adjustment has been made for computing the total income.

(2) Rs. 1,00,000 advanced to a Textile Mill against supply of cloth after the accounting year should be disallowed.

(3) Penalty of Rs. 30,000 paid for violation of import quota rules will be disallowed [Vide I.T.R. Vol. 41 (1961) page 350]. [Supreme Court decision].

(4) Rs. 10,000 paid to the Managing Director as motor car advance will be disallowed under the heading "Salaries".

(5) Rs. 3,000 paid as advance income-tax will be disallowed in computing the total income.

(6) Rs. 4,000 received as interest on "Tax-free" security of Central Government will be included in the total income but rebate will be allowed in calculating the amount of income-tax payable by the Company. (Section 86A)

(7) Rs. 50,000 paid as interest towards unpaid balance of purchase price to the vendor will not be allowed as it is not an interest on "Borrowed Capital". According to Hon'ble Bombay High Court in *Bombay Steam Navigation Co. (1953) Private Limited Vs Commissioner of Income-tax Bombay City I* [as reported in *Income-tax Reports* Vol. 48 (1963) page 476] interest paid on the unpaid balance of the price of assets was not deductible either under Section 10(2)(iii) or under Section 10(2)(xv) and as such was not of the nature of revenue deductions admissible under Section 10(1) (old sections).

(8) Development rebate in respect of electric Computers and typewriters is not admissible.

(9) Bonus paid in terms of an agreement signed in February 1969 is an admissible deduction although it related to 1965-66.

(10) Dividend received from an Indian Company which has started a new industrial undertaking will be included in the total income; but deduction will be allowed in calculating the amount of Income-tax payable by the Company. The proportionate amount of the dividend relating to the profit arising from the new industrial undertaking will be eligible for the deduction (Section 80K).

(11) Interim dividend of Rs. 20,000 paid by the Directors and approved, is an appropriation of profit and as such is not admissible in computing the total income of the Company.

(12) Depreciation of Rs. 5,000 debited to Profit & Loss Account is presumed to have been calculated according to Income-tax Rules.

**Computation of total income for the year ended 31st March, 1969.
Assessment year 1969-70**

Net Profit as per Profit & Loss A/c.		Rs.	63,000
Less: Interest	Rs.	10,000	
Dividend		6,000	16,000
Carried over		Rs.	47,000

	Brought forward		Rs. 47,000
Add :	Purchase advance	Rs. 1,00,000	
	Penalty	30,000	
	Salary—Motor Car advance	10,000	
	Rates & Taxes	3,000	
	Interest paid	50,000	
	Development Rebate Reserve	4,000	
	<u>Interim Dividend</u>	20,000	2,17,000
	Business Profit		Rs. 2,64,000
	<u>Interest</u>		10,000
	<u>Dividend</u>		6,000
	Gross Total Income		Rs. 2,80,000
	Less : 60% of Rs. 6,000 (Sections 80K and 80M)		3,600
	Total Income		Rs. 2,76,400

Question No. 40

Mr. Gupta, a resident in India, during the year 1968-69, is an executive of a Calcutta industrial company. He submits the following statement of his income from salaries during the financial year ended 31st March, 1970.

Net salaries drawn Rs. 18,000
(including Dearness allowance of Rs. 3,000, 50% of which is to enter into computation of retirement benefit, according to rules of the Company)

Deductions made from salary bills—

(i) Income-tax	Rs. 1,800
(ii) Repayment of advances from Provident Fund	1,200
(iii) Contribution to the recognised Provident Fund	1,500

Mr. Gupta further declares that—During the year

(a) He was provided with a rent-free, furnished accommodation, the fair rent of which, according to the locality, is Rs. 400 per month.

(b) The employer paid insurance premium of Rs. 2,500 on the life policy of Mr. Gupta.

(c) He was provided with a motor car of 10 H. P. which he used for official as well as private purposes and the entire expenses of maintenance of the car were borne by the Company.

(d) He received a sum of Rs. 1,000 from the Company as an assistance in connection with his proceeding on leave with his wife and children to Jalpaiguri which is his home district.

(e) His salaries include also an entertainment allowance of Rs. 3,500. Mr. Gupta has been enjoying such entertainment allowance regularly since 1st January, 1955.

On examination of Mr. Gupta's bank a/c. a credit of Rs. 3,000 is found on 2.8.69 which Mr. Gupta explains as a receipt from the Company resulting from modification of the terms of his employment.

Mr. Gupta claim deduction of Rs. 600 for cost of books required for the purpose of his duties.

Mr. Gupta has policies on his own life and on his wife's life for a total sum of Rs. 40,000. During the year he himself paid life insurance premium of Rs. 2,000.

Determine the total income of Mr. Gupta from salaries for the relevant assessment year.

(Burdwan University—M. Com.)

ANSWER

(1) Net salaries drawn		Rs.	18,000
Add : Income-tax	Rs.	1,800	
Repayment of Advance From Provident Fund		1,200	
Contribution to the recog. Prov. Fund		1,500	4,500
			<hr/>
		Rs.	22,500
Less : Dearness Pay 50% of Rs. 3,000	Rs.	1,500	
Dearness Allowance		1,500	
Entertainment Allowance		3,500	6,500
			<hr/>
	Basic Salary	Rs.	16,000
			<hr/>

- (2) Insurance Premium of Rs. 2,500 will be treated as taxable perquisite in the hands of Mr. Gupta.
- (3) Monetary equivalent of the Motor Car (10 H. P.) expenses borne by the Company amounting to Rs. 150 per month will be taxable in the hands of Mr. Gupta.
- (4) Rs. 1,000 received in connection with Mr. Gupta's proceeding on leave with his wife and children to his home district of Jalpaiguri is not taxable in the hands of Mr. Gupta.
- (5) Rs. 3,000 received from the Company for the modification of the terms of his employment is taxable in the hands of Mr. Gupta [Section 17(3)(i)] [Proportionate Relief is admissible in terms of Section 89(1)]

(6) Entertainment Allowance	Rs.	3,500
Less : 20% of Basic salary of Rs. 16,000		3,200
		<hr/>
Taxable perquisite	Rs.	300
		<hr/>

- (7) Taxable perquisite in respect of rent-free furnished accommodation in Calcutta is calculated as follows—

Basic Salary	Rs.	16,000
Dearness pay		1,500
Taxable Entertainment Allowance		300
		<hr/>
	Rs.	17,800
		<hr/>

As the fair rent of Rs. 4,800 is more than 12.5% but less than 37.5% of Rs. 17,800, the taxable benefit will be 12.5% of Rs. 17,800 = Rs. 2,225.

**Computation of total income of Mr. Gupta for the year ended
31st March 1970 - Assessment year 1970-71**

Basic Salary	Rs	16,000
Dearness Pay		1,500
Dearness Allowance		1,500
Motor Car (10 H.P.)		1,800
Entertainment Allowance		300
Insurance Premium		2,500
Compensation for modification of the terms of employment		3,000
Rent-free accommodation		2,225
	Rs	28,825
Less: Cost of Book		500
Gross Total Income	Rs	28,325
Less: Life Insurance Premium paid by the Company	R	2,500
Mr. Gupta		2,000
	Rs	4,500
But limited to 10% of Rs. 40,000	R	4,000
Contribution to Recognised Provident Fund		1,500
	R	5,500
60% of Rs. 4,000	Rs	3,000
50% of Rs. 1,500		250
		3,250
Total Income	Rs	25,075
Rounded off	Rs	25,080

Question No. 41.

The Calcutta Hardware Store registered firm has three partners, A, B, C with their profit sharing ratio 5:3:2. The firm files return showing its income during the calendar year 1969 together with the statement of Profit & Loss A/c as follows

Dr		Cr	
To Opening stock	Rs. 40,500	By Sales	Rs. 2,40,500
„ Purchases	1,65,350	Purchase returns	4,200
„ Sales returns	3,200	Closing stock	55,750
„ Establishment Expenses	22,400		
„ Salary to Partners			
A Rs. 6,000			
B 5,000			
C 4,000	15,000		
„ Rent & Taxes	2,250		
„ Rent paid to A for the firm's use of his house	3,000		
Carried over	Rs. 2,51,700	Carried over	Rs. 3,00,450

Brought Forward	Rs. 2,51,700	Brought Forward	Rs. 3,00,450
„ Repairs & Renewals	4,750		
„ Legal Expenses	1,500		
„ Depreciation	4,200		
„ Commission on Sales paid to Partners :			
A Rs. 3,000			
B 2,000			
C 1,000	6,000		
„ Bad Debts written off	1,700		
„ Net Profit transferred to Capital A/cs of Partners	30,600		
	Rs. 3,00,450		Rs. 3,00,450

On scrutiny it is found that—

(a) The firm has consistently under-valued the stocks on both sides by 5%.

(b) Rent and Taxes include payment of income-tax Rs. 1,200.

(c) Legal expenses include lawyer's fees of Rs. 750 paid for an income-tax appeal case.

(d) In respect of claim for bad debts, no particular action was taken by the firm for recovery of a debt of an amount of Rs. 600

(e) A bad debt of Rs. 1,200 allowed in a past assessment has been recovered in this year at Rs. 900 in full satisfaction and the said amount has been credited directly in the capital a/cs of the partners in their respective profit-sharing ratio.

(f) The Balance Sheet shows as stated below—

Written down value of assets.

Motor Ca.	Rs. 11,600 (Allowable depreciation at 20%)
Furniture	6,500 (Allowable depreciation at 10%)
Godown sheds (2nd Class)	21,600 (Allowable depreciation at 5%)

Determine the total income of the firm and show the allocation of profits to partners assuming the granting of renewal of the registration of the firm for the assessment year.

(Burdwan University—M. Com.)

ANSWER

- (1) The opening stock should be increased by Rs. 2,134 (Rs. 40,500 ÷ 19). The closing stock should also be increased by Rs. 2,934 (Rs. 55,750 ÷ 19). The net profit as per Profit & Loss A/c should, therefore, be increased by Rs. 800 (Rs. 2,934 less Rs. 2,134).
- (2) Payment of income-tax of Rs. 1,200 is not an admissible deduction.
- (3) Lawyer's fees of Rs. 750 paid for an income-tax appeal case is not an admissible deduction.
- (4) As the firm took no particular action for recovery, the bad debt of Rs. 600 should be disallowed.
- (5) The bad debt of Rs. 1,200 allowed in a past assessment, which has been recovered to the extent of Rs. 900 in full satisfaction, should be taxable to the extent of Rs. 900 [Section 41(4)].

(6) Depreciation admissible shall be calculated as follows—

Motor Car	Rs. 11,600	" 20%	Rs. 2,320
Furniture	6,500	" 10%	650
Godown sheds	21,600	" 5%	1,080
			<hr/>
			Rs. 4,050

**Computation of total income for the year ended
31st December, 1969—Assessment year 1970-71.**

Net Profit as per Profit & Loss A/c.		Rs.	30,600
Add : Bad Debt recovered			900
Adjustment re : Opening & Closing stock			800
		<hr/>	
		Rs.	32,300
Add : Rent & Taxes	Rs. 1,200		
Legal Expenses	750		
Bad Debts	600		
Depreciation to be considered separately	4,200		6,750
	<hr/>		<hr/>
		Rs.	39,050
Less : Depreciation as calculated			4,050
		<hr/>	
		Rs.	35,000
Add : Salary paid to partners			
A	Rs. 6,000		
B	5,000		
C	4,000	Rs. 15,000	
	<hr/>		

Commission on Sales paid to Partners

A	Rs. 3,000		
B	2,000		
C	1,000	6,000	21,000
	<hr/>	<hr/>	<hr/>
Total Income		Rs.	56,000

Allocation to Partners

	Total	A	B	C
Profit	Rs. 35,000	Rs. 17,500	Rs. 11,667	Rs. 5,833
Salary	15,000	6,000	5,000	4,000
Commission	6,000	3,000	2,000	1,000
	<hr/>	<hr/>	<hr/>	<hr/>
	Rs. 56,000	Rs. 26,500	Rs. 18,667	Rs. 10,833

Question No. 42.

The profit and Loss A/c of M/s Alpha Spring Manufacturing Co. for the year ending 31st March, 1970 shows the following position—

To Opening Stock	Rs.	80,500	By Sale less Return	Rs.	5,39,750
.. Purchase Less Returns		35,000	.. Closing Stock		75,500
.. Wages		35,400			
.. Electricity		6,000			
.. Salary		40,500			
.. Proprietor's Drawing (salary)		18,000			
.. Rent & Taxes		3,600			
.. Commission on Sales		2,400			
.. Bad Debts written off		3,000			
.. Reserve for Doubtful Debts		7,000			
.. Repairs & Renewals		2,800			
.. Legal Charges		1,500			
.. Advertisement		2,200			
.. Depreciation		26,600			
.. Net Profit transferred to Capital A/c		35,750			
	Rs.	6,15,250		Rs.	6,15,250

The following facts are revealed from scrutinising the Accounts and vouchers—

- (1) Municipal Tax includes Rs. 700 paid for the proprietor's residential house
 - (2) Legal charges include lawyer's fee of Rs. 400 for an Income-tax appeal case
 - (3) Both opening stocks and closing stocks have been undervalued by 5% as in the past
- Ascertain the assessable income.

[Burdwan University —B. Com. (Hons.)]

ANSWER

- (1) Municipal Tax of Rs. 700 paid for the proprietor's residential house is not an admissible deduction.
- (2) Lawyer's fee of Rs. 400 paid for an Income-tax appeal case is not an admissible deduction.
- (3) The opening stock should be increased by Rs. 4,237 (Rs. 80,500 \div 19). The closing stock should also be increased by Rs. 3,974 (Rs. 78,500 \div 19). The net profit as per Profit & Loss A/c should, therefore, be reduced by Rs. 263 (Rs. 4,237 less Rs. 3,974).
- (4) It is presumed that the entire amount of Bad Debts is proved to be *bonafide* and as such is admissible in full.
- (5) It is presumed that the amount of depreciation debited in the Profit & Loss A/c has been calculated according to the rates laid down in the Income-tax Rules.

Computation of total income of M/s Alpha Spring Manufacturing Co. for the year ending 31st March, 1970 —Assessment year 1970-71.

Net Profit as per Profit & Loss A/c.	Rs.	35,750
Less : Adjustment re : Opening and Closing stock		263
Carried over	Rs.	35,487

	Brought Forward	Rs.	35,437
Add : Proprietor's Drawing	Rs. 18,000		
Rent & Taxes	700		
Reserve for Doubtful Debts	7,000		26,100
Legal Charges	400		
Total Income		Rs.	61,587
Rounded off		Rs.	61,590

Question No. 43

The following is the profit and loss account for the year ended 31st December, 1969 of the Deccan Sugar Mills of which A is the owner

To manufacturing expenses	Rs. 6,85,295	By sale of sugar	Rs. 11,61,300
.. Excise duty	1,07,500	Rent from agricultural lands	950
.. Salary & Wages	1,20,495	Revenue from fisheries	3,700
.. Establishment charges	50,150	Sale proceeds of cane	6,07,355
.. General charges	13,750	Profit on sale of motor truck	1,230
.. Fine paid to Excise Dept	1,750		
.. Interest on bank loans	25,000		
.. A's remuneration	41,000		
.. Depreciation	69,000		
.. Cultivation Expenses	4,57,560		
.. Income-tax	25,000		
.. Net Profit	1,78,095		
	Rs. 17,74,535		Rs. 17,74,535

Compute the total income of Sri A for the Assessment year 1970-71 after taking the following information into consideration—

(i) Sale proceeds of cane include Rs. 5,12,000 on account of cane produced and consumed in the factory and debited to manufacturing expenses, the average market price of such cane being Rs. 5,75,000.

(ii) The motor truck sold during the year for Rs. 3,230 was purchased in the past for Rs. 17,000, depreciation claimed in respect thereof in past assessments being Rs. 15,000.

(iii) General charges include (a) Rs. 1,000 legal expenses incurred in defending a suit regarding the company's title to certain agricultural lands, and (b) Rs. 9,000 paid to Sri A's son who is an employee in the sugar mill for a trip to Hawaii to study modern methods of manufacture.

(iv) Depreciation in respect of all assets has been agreed at Rs. 75,000.

[Calcutta University - B. Com. (Hons.)]

ANSWER

- (1) Rs. 5,12,000 included in the sale proceeds of cane produced and consumed in the factory and debited to manufacturing expenses should not be taken into account for income-tax purposes as these are *contra entries* in the books of account. Cultivation expenses amounting to Rs. 4,57,600 should be disallowed as these expenses are for agricultural purposes. Similarly Rs. 5,75,000 representing the estimated market price of cane consumed in the factory should not be taken into account for Income-tax purposes as it is of agri-

- cultural nature. (Rule 7 of the Income-tax Rules, 1962)
- (2) Sale price of Motor Truck Rs. 3,230
 Less : Written down value
 (Rs. 17,000 less Rs. 15,000) 2,000
 Excess over written down value is
 taxable under Section 41 (2) Rs. 1,230
- (3) Fine paid to Excise Dept. Rs. 1,750 should be disallowed [Vide I. T. R. Vol 41 (1961) page 350] [Supreme Court decision].
- (4) Legal Expenses of Rs. 1,000 incurred in defending a suit regarding the company's title to certain agricultural lands should be disallowed for Income-tax purposes.
- (5) Rs. 9,000 paid to the proprietor's son for a trip to Hawaii should be disallowed for Income-tax purposes
- (6) Rent from agricultural lands are not taxable.
- (7) Revenue from fisheries is taxable as fisheries are not agricultural operations.

Computation of total income of Shri "A" from the Sugar Mills for the year ended 31st December, 1969—Assessment year 1970-71.

Net Profit as per profit & Loss A/c		Rs.	1,78,095
Add : Cultivation Expenses	Rs. 4,57,500		
A's Remuneration	41,000		
Depreciation	69,000		
Income-tax	25,000		
General Charges	10,000		
Fine paid to Excise Deptt.	1,750		6,04,250
		Rs.	7,82,345
Less : Estimated market price of the Cane consumed in Factory	Rs. 5,75,000		
Rent from Agricultural lands	950		
Depreciation as per I/Tax Rules	75,000		6,50,950
Total Income		Rs.	1,31,395

Question No. 44.

A gives the undernoted particulars of his income for the year ended 31st March, 1970—

- (i) Salary after deduction of income-tax at source and own contribution to the office Provident Fund which is recognised Rs. 20,000
- (ii) Income-tax deduction at source 3,400
- (iii) Own contribution to the Provident Fund 2,600
- (iv) Employer's contribution to the Provident Fund 3,000
- (v) Interest credited to the Provident Fund calculated @ 10% per annum 3,600
- (vi) Expenses for holiday trip to Bangalore (not his home-district) met by A's employer 1,500
- (vii) Cash house rent allowance (actual rent paid by A for the house at Burdwan was Rs. 6,000) 4,800

A is given the free use of a 15 H.P. Car by his employer, all the expense being met by the latter.

A paid life insurance premium of Rs. 4,500 on a policy of Rs. 40,000 on his life.

Compute A's total income for the Assessment year 1970-71 assuming that he had no other income.

[Calcutta University—B. Com. (Hons.)]

ANSWER

- (1) Salary after deduction of income-tax at source and own contribution to the office

Recognised Provident Fund	Rs.	20,000
Add : Income-tax deduction at source		3,400
Own contribution to Provident Fund		2,600

Basic Salary	Rs.	26,000

- (2) Expenses for holiday trip to Bangalore (not his home district) met by the Employer is taxable in full

- (3) (a) Cash House Rent Allowance Rs. 4,800
 (b) 10% of Basic Salary of Rs. 26,000 2,600

(c) Rent paid	Rs. 6,000	
Less : 10% of Salary	2,600	3,400
	-----	-----

 (d) Maximum Allowance 3,600

- (4) The monetary equivalent for the free use of a 15 H.P. Car is Rs. 1,800.

- (5) The maximum amount of life Insurance premium eligible for relief is limited to Rs. 4,000 being 10% of the life policy of Rs. 40,000.

**Computation of total income for the year ended 31.3.70.
Assessment year 1970-71.**

Basic Salary		Rs.	26,000
Employer's contribution to Prov. Fund	Rs. 3,000		
Less : 10% of Basic Salary	2,600		400
	-----		-----
Interest credited to Prov. Fund @ 10%	Rs. 3,600		
Less : Admissible @ 6%	2,160		1,440
	-----		-----
Expenses for Holiday trip			1,500
Cash House Allowance	Rs. 4,800		
Less : Tax-free amount	2,600		2,200
	-----		-----
Motor Car			1,800

Gross Total Income	Carried over	Rs.	33,340

	Brought Forward	Rs. 33,340
Less : Life Insurance Premium	Rs. 4,000	
Provident Fund Contribution	2,600	
	<u>Rs. 6,600</u>	
60% of Rs 5 000	Rs 3,000	
50% of 1 600	800	3,800
	<u>Rs 3,800</u>	
Total Income		<u>Rs 29,540</u>

Question No. 45

C is the owner of four houses in Calcutta one occupied by him as his dwelling house, one used by him for his own business and the remaining two let out to tenants. The particulars in regard to these buildings are given below.

	Dwelling House	House used for own business	House let out used by tenant for business	House let out—used by tenant for residence
Date of construction	1945	1958	1960	1968
Rent received	—	—	Rs 4 800	Rs 2,400
Municipal tax (Paid by C)				
Owner's portion	Rs 400	Rs 300	Rs 375	Rs 250
Occupier's portion	Rs 400	Rs 300	Rs 375	Paid by tenant
Repairing Expenses	Rs 2 000	Rs 1 500	Rs 500	Rs 100
Ground rent	Rs 60	Rs 50	Rs 60	Rs 40
Interest on loan taken for constructing the house	—	—	Rs 1 500	Rs 1,800
Municipal Annual Value	6,000	Rs 4,500	Rs 4,800	Rs 2,400

Assuming that C had no other income except dividends of Rs 12,000 (Gross) received during the year ended 31.3.70 compute his total income. Indicate reasons for excluding or including any item in your computation.

[Calcutta University—B. Com. (Hons.)]

ANSWER

(1) House let out—used by tenant for residence. Constructed in 1968.

Rent received		Rs 2,400
: Statutory deduction in terms of the 2nd Proviso to Section 23(1)	Rs. 600	
Municipal tax paid	250	850
	<u>Rs. 1,550</u>	
Less : Statutory deduction for repairs @ 1/6th of Rs 1,550	Rs. 258	
Ground Rent	40	
Interest on loan taken for construction	1,800	2,098
	<u>Rs. 548</u>	
Loss		<u>Rs. 548</u>

Notes : (1) With effect from the assessment year 1965-70 any municipal tax paid by the owner should be deducted for computing net annual value.

(2) The loss of Rs. 548 should be ignored for the purpose of computation of total income according to the last portion of the 2nd Proviso to Section 23(1).

(2) House let out —Used by tenant for business. Constructed in 1960.

Rent Received		Rs.	4,800
Less : Municipal Tax paid by the owner			750
		Rs.	4,050
Less : Statutory deduction for repairs			
(a) 1/6th of Rs. 4,050	Rs.	675	
Ground Rent		60	
Interest on loan taken for Construction		1,500	2,235
			Rs. 1,815

(3) House used for owner's Business. Constructed in 1958.

The expenses incurred in respect of this house should be considered while computing the income from Business.

(4) Dwelling house—Constructed in 1945.

Municipal Annual value	Rs.	6,000
Add : 1/9th of Rs. 6,000		666
	Rs.	6,666
Gross Annual value		1,800
Less : Statutory deduction of 50% but limited to		
	Rs.	4,866

The amount should, however, be restricted to 10% of (Rs. 12,000 plus Rs. 1,815) i.e. Rs. 1,382 according to the Proviso to Section 23(2) as amended by the Finance (No. 2) Act, 1967

	Rs.	1,382
Less ; Statutory deduction for repairs		
@ 1/6th of Rs. 1,382	Rs.	230
Ground Rent		60
		290
	Rs.	1,092

Notes : In determining the municipal value, the Corporation of Calcutta allows a deduction of 10% on account of repairs. The municipal value of Rs. 6,000 has therefore, been increased by 1/9th of Rs. 6,000.

**Computation of total income for the year ended 31.3.70.
Assessment year 1970-71.**

Dividends (Gross)	Rs. 12,000
House let out	1,815
Dwelling house	1,092
	<hr/>
Gross Total Income	Rs. 14,907
Less : Dividends (Section 80L)	1,000
	<hr/>
Total Income	Rs. 13,907
	<hr/>
Rounded off	Rs. 13,910
	<hr/>

Question No. 46.

A departmental store of which Sri Banik is the owner draws up the Profit & Loss Account for the year ended 31st December, 1969 as under—

To Opening Stock	Rs. 1,20,000	By Sales	Rs. 20,00,000
„ Purchases	12,50,000	„ Closing Stock	1,00,000
„ Gross Profit C/d	7,30,000		
	<hr/>		<hr/>
	Rs. 21,00,000		Rs. 21,00,000
	<hr/>		<hr/>
To Carriage Inwards	Rs. 40,000	By Gross Profit b/d	7,30,000
„ Salaries	1,10,000		
„ Rent, Rates & Taxes	25,000		
„ Interest	30,000		
„ Commission	80,000		
„ Legal Charges	5,000		
„ Bad debts written off	11,000		
„ Repairs to Buildings	15,000		
„ General Charges	9,000		
„ Depreciation	75,000		
„ Net Profit	3,30,000		
	<hr/>		<hr/>
	Rs. 7,30,000		Rs. 7,30,000
	<hr/>		<hr/>

Compute Sri Banik's income for the Assessment year 1970-71 under the head "Profits & Gains of Business or Profession" from the above noted data after taking into account the following additional information. State reasons wherever necessary for the inclusion or exclusion of any item.

- (a) Stock of goods at the beginning as well as closing have consistently been valued at 10% below cost.
- (b) Sales include a sum of Rs. 80,000 representing the value of goods withdrawn by Sri Banik for his personal use. The goods were purchased during the year 1968 at a cost of Rs. 1,00,000 and their market value on the date of withdrawal by Sri Banik was Rs. 1,20,000.
- (c) Salaries include a sum of Rs. 12,000 charged to the business by Sri Banik for services rendered by him to the business.

- (d) Commission of Rs. 80,000 includes the charges of Rs. 10,000 paid to a broker for securing to the business a loan of Rs. 10,00,000 repayable in 10 years.
- (e) Bad debts written off represent the unrecovered portion of sale proceeds of Rs. 30,000 from a customer. The customer is a man of means, but he disputes the liability stating that an inferior quality of goods was supplied. The dispute is before a court of law and is yet to be settled. The sale was effected in 1967 and the entire sum Rs. 30,000 was included in the total sales figures in the relevant Profit & Loss Account.
- (f) Legal charges represent the fees paid to a firm of Solicitors for examining the title deeds of a building to which Sri Banik proposes to shift his departmental store. The building was finally acquired in 1970.
- (g) General charges include a sum of Rs. 2,000 paid as an annual grant to the Employees Recreation Club formed by the employees of the departmental stores.
- (h) Depreciation according to Income-tax Rules works out at Rs. 80,000.

[Calcutta University—B. Com. (Hons.)]

ANSWER

- (a) The value of opening stock of goods should be increased by Rs. 13,333 (Rs. 1,20,000 ÷ 9) similarly the value of the closing stock should also be increased by Rs. 11,111 (Rs. 1,00,000 ÷ 9). The Net Profit as per Profit and Loss A/c, should, therefore, be reduced by Rs. 2,222 (Rs. 13,333 less Rs. 11,111).
- (b) Sri Banik withdrew some goods for his personal use. In the process of withdrawal of these goods there cannot arise any Profit or Loss therefrom. Sales have been credited with Rs. 80,000 whereas the purchases have been debited with Rs. 1,00,000. The Net Profit as per Profit & Loss A/c should, therefore, be increased by Rs. 20,000. The excess market value over the Cost price amounting to Rs. 20,000 (Rs. 1,20,000 less Rs. 1,00,000) should be ignored for all purposes.
- (c) Salary of Shri Banik amounting to Rs. 12,000 should be disallowed.
- (d) Commission of Rs. 10,000 paid to a broker for securing business loan of Rs. 10,00,000 is an admissible expense according to Hon'ble Supreme Court's decision in India Cements Ltd. Vs. Commissioner of Income-tax Madras [Vide I.T.R. Vol 60 (1966) page 52].
- (e) Bad debts written off Rs. 11,000 should be disallowed as the dispute has not yet been finalised.
- (f) Legal charges of Rs. 5,000 for examining title deed should be disallowed.
- (g) Annual grant of Rs. 2,000 paid to the Employees Recreation Club formed by the employees will be allowed as Staff Welfare expense.

Computation of Sri Banik's income from "Profits & Gains of Business" for the accounting year ended 31.12.69—Assessment year 1970-71.

Net profit as per Profit & Loss A/c.	Rs. 3,30,000
Less : Adjustments a/c. Opening and Closing stock of goods	2,222
Carried over	Rs. 3,27,778

			Rs. 3,27,778
	Brought Forward		
Add :	Goods withdrawn by Sri Banik	Rs. 20,000	
	Salary drawn by Sri Banik	12,000	
	Bad Debts	11,000	
	Legal Charges	5,000	
	Depreciation	75,000	
			1,23,000
			<hr/>
	Less : Depreciation according to Income-tax Rules		Rs. 4,50,778
			80,000
			<hr/>
	Business Income		Rs. 3,70,778
			<hr/>
	Rounded off		Rs. 3,70,780
			<hr/>

Question No. 47.

A, B, C and D were partners in a firm sharing profits and losses in the ratio of 30%, 25%, 25% and 20% respectively. After six months D left the firm and E was taken in and profit ratios were re-adjusted as A 25%, B 25%, C 25% and E 25%.

The Profits of the firm for the previous year ended 31st Dec. 1969* amounted to Rs. 1,20,000 which included interest of Rs. 6,000 on Tax-free Securities and interest of Rs. 3,000 charged to A on his debit balance. The profit of Rs. 1,20,000 has been arrived at after debiting the following—

- (i) Interest paid to B on his capital account—Rs. 4,000.
- (ii) Salary paid to C & D Rs. 1,200 & Rs. 6,000 respectively.
- (iii) Rent of Rs. 6,000 paid to D.
- (iv) Commission of Rs. 2,000 paid to E.
- (v) Donations and charities—Rs. 6,000.

Compute the total income of the firm and allocate the same amongst the partners.

[Calcutta University—B. Com. (Hons.)]

ANSWER

- (1) According to Section 40(b) any interest, salary, commission or other remuneration paid to any partner should be disallowed in computing the total income of the Firm. But in the absence of any such statutory direction an interest charged to any partner on his debit balance shall not be excluded from the computation of total income of the Firm even though a portion of the interest will be credited to the partners' Account in the shape of profit.
- (2) Rent paid to the partner "D" is an admissible expense for computing the total income of the Firm.
- (3) Profit & Loss Account for the year ended 31.12.69 has been re-adjusted on six monthly basis.

Profit as per Profit & Loss A/C.		Rs. 1,20,000
Less : Interest on Tax-free Securities	Rs. 6,000	
Interest Charged to A's Debit Balance	3,000	9,000
		<hr/>
	Carried over	Rs. 1,11,000

		Brought Forward		Rs. 1,11,000
Add :	Interest paid to B	Rs. 4,000		
	Salary paid to C	1,200		
	Salary paid to D	6,000		
	Rent Paid to D	6,000		
	Commission paid to E	2,400		
	Donations	6,000		
				25,600
Profit for the year 1969			Rs. 1,36,600	
Profit for the period 1.1.69 to 30.6.69			Rs. 68,300	
„ „ „ 1.7.69 to 31.12.69			68,300	
			Rs. 1,36,600	

PROFIT & LOSS ACCOUNT FOR THE PERIOD 1.1.69 to 30.6.69

To	Donation	Rs. 3,000	By	Balance	Rs. 68,300
„	Interest paid to B	2,000	„	Interest charged to	
	Salary paid			A's Debit balance	1,500
	C Rs. 600		„	Interest on Tax-free	
	D 6,000	6,600		securities	3,000
„	Rent paid to D	3,000			
„	Net profit				
	A 30% Rs. 17,460				
	B 25% 14,550				
	C 25% 14,550				
	D 20% 11,640	58,200			
		Rs. 72,800			Rs. 72,800

PROFIT & LOSS ACCOUNT FOR THE PERIOD 1.7.69 to 31.12.69.

To	Donation	Rs. 3,000	By	Balance	Rs. 68,300
„	Interest paid to B	2,000	„	Interest charged to	
„	Salary paid to C	600		A's Debit Balance	1,500
„	Rent paid to D	3,000	„	Interest on Tax-free	
„	Commission to E	2,400		securities	3,000
„	Net profit				
	A 25% Rs. 15,450				
	B 25% 15,450				
	C 25% 15,450				
	E 25% 15,450	61,800			
		Rs. 72,800			Rs. 72,800

**COMPUTATION OF TOTAL INCOME OF THE FIRM FOR THE YEAR ENDED 31-12-69.
ASSESSMENT YEAR 1970-71**

	TOTAL	A	B	C	D	E
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
Net profit for 1.1.69 to 30.6.69	58,200	17,460	14,550	14,550	11,640	—
Less : Interest on Tax-free Securities	3,000	900	750	750	600	—
Add : Donation	55,200	16,560	13,800	13,800	11,040	—
Interest	3,000	900	750	750	600	—
Salary	2,000	—	2,000	—	—	—
	6,600	—	—	600	6,000	—
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
(1).....	66,800	17,460	16,550	15,150	17,640	—
Net profit for 1.7.69 to 31.12.69	61,800	15,450	15,450	15,450	—	15,450
Less : Interest on Tax-free Securities	3,000	750	750	750	—	750
Add : Donation	58,800	14,700	14,700	14,700	—	14,700
Interest	3,000	750	750	750	—	750
Salary	2,000	—	2,000	—	—	—
Commission	600	—	—	600	—	—
	2,400	—	—	—	—	2,400
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
(2).....	66,800	15,450	17,450	16,050	—	17,850
Business Income—Total of (1) & (2)	1,33,600	32,910	34,000	31,200	17,640	17,850
Add : Interest of Tax-free Securities	6,000	1,650	1,500	1,500	600	750
Gross Total Income	1,39,600	34,560	35,500	32,700	18,240	18,600
Deduction a/c Donation @ 55% of Rs. 6,000	3,300	908	825	825	330	412
Total Income	1,36,300	33,652	34,675	31,875	17,910	18,188

Question No. 48

The profit and loss account of Mr. X carrying on business for the year ended 31st December, 1969, is reproduced below—

To Opening Stock	Rs. 30,000	By Sales	Rs. 2,38,000
„ Purchases	1,80,000	„ Profit on sale of old ornaments belonging to Mrs. X	2,000
„ Sales Returns	3,000	„ Closing Stock	39,000
„ Rent & Taxes	3,100		
„ Stationery	1,200		
„ Advertisement	700		
„ Shri X's remuneration	6,000		
„ Salaries & Wages	4,500		
„ Staff Welfare expenses	2,000		
„ Depreciation	4,300		
„ Office expenses	2,300		
„ Net Profit to Capital a/c	41,900		
	<u>Rs. 2,79,000</u>		<u>Rs. 2,79,000</u>

The income-tax records of Mr. X reveal the following facts—

Written down value of assets at the end of last year's assessment is stated below—

- (i) Plant and machinery (General)—Rs. 25,000
- (ii) Furniture—Rs. 6,400
- (iii) Motor lorry—Rs. 16,000.

On examination of evidence it is found that—

(a) The assessee has installed (and also put into use) a new plant and machinery on 1st April, 1969 the cost of which amounting to Rs. 25,000 has been debited to purchases account.

(b) Rent and taxes include payment of income-tax —Rs. 1,300

(c) A consignment of goods valued at cost Rs. 4,000 has been sent to an agent for sale and it is shown in suspense account in the balance sheet.

(d) Rs. 1,000 on account of liability foregone by a creditor to whom the sum was due by way of commission charged by the proprietor in the revenue account of the preceding year have been set off against drawings account of Mr. X.

(e) Staff welfare expenses include Rs. 1,500 being cost of pucca well-built-house for use from 1st April, 1969 by staff and workers.

(f) Opening stock and closing stock were shown short by Rs. 10,000 and Rs. 5,000 respectively.

Ascertain the total taxable income of Mr. X for the Assessment year 1970-71.

[Calcutta University—B. Com. (Hons.)]

ANSWER

(a) Cost of a new plant and machinery amounting to Rs. 25,000 debited to purchase account should be disallowed as capital expenditure. Depreciation will, however, be admissible. Though the plant and machinery is new no "Development Rebate" is admissible as 75% of the amount has not been debited to the Profit & Loss A/c and credited to any "Development Rebate Reserve" account.

(b) Payment of Income-tax amounting to Rs. 1,300 should be disallowed.

(c) Goods valued at cost Rs. 4,000 sent on consignment should be included in the closing stock for income-tax purposes.

(d) Rs. 1,000 on account of liability foregone by a creditor in respect of commission charged in Revenue account of the preceding year should be included in the computation of total income [Section 41(1)]

(e) Cost of pucca well-built house for use by staff and workers should be disallowed as Capital Expenditure. Depreciation will, however, be admissible.

(f) Net Profit should be increased by Rs. 5,000 being under-valuation of the closing stock. Similarly it should be reduced by Rs. 10,000 being under-valuation of the opening stock. The net result will be a reduction of Rs. 5,000 in the net profit of Rs. 41,900.

(g) The net profit should be reduced further by Rs. 2,000 being profit on sale of old ornaments belonging to Mrs. X. Capital gains arising from "Long-term Capital Asset" should be disregarded in computing total income if the amount is less than Rs. 5,000.

(h) Depreciation should be calculated as under—

(i) Plant and Machinery written down value on 1.1.69	Rs. 25,000		
Additions on 1.4.69	25,000		
	<hr/>		
	Rs. 50,000	(at 10%)	Rs. 5,000
	<hr/>		
(ii) Furniture written down value on 1.1.69	Rs. 6,400	(at 10%)	640
	<hr/>		
(iii) Motor Lorry written down value on 1.1.69	Rs. 16,000	(at 30%)	4,800
	<hr/>		
(iv) Pucca well-built house used from 1.4.69 by workers	Rs. 1,500	(at 25%)	38
Initial Depreciation [Section 32 (i) (iv)]		(at 20%)	300
	<hr/>		
			Rs. 10,778

**Computation of total income of Mr. X for the year ended
31st December, 1969 Assessment year 1970-71.**

Net Profit as per Profit & Loss A/c.		Rs. 41,900
Add : Purchases	Rs. 25,000	
Rent & Taxes	1,300	
X's Remuneration	6,000	
Staff Welfare Expense	1,500	
Depreciation	4,300	
Goods sent on consignment	4,000	
Liability foregone	1,000	43,100
	<hr/>	
		Rs. 85,000
Less : Profit on sale of ornaments	Rs. 2,000	
Adjustment of opening and closing stocks	5,000	
Depreciation as per I/Tax Rules	10,778	17,778
	<hr/>	
Total Income		Rs. 67,222
		<hr/>
Rounded off		Rs. 67,220

Question No. 49

Compute the total income of Shri Sukumar Sen Sharma for the Assessment year 1970-71 from the following data—

I	Interest on securities	Rs.	5,000
II	Income from house property		25,000
III	Profits & gains of business or profession		
	(a) Manufacturing business—		
	(i) Loss before allowance of depreciation and development rebate		25,000
	(ii) Depreciation for the year		60,000
	(iii) Development rebate for the year		
	(b) Speculation business—		
	(i) Loss in jute speculation		20,000
	(ii) Profit in share speculation		50,000
IV	Capital gains		
	(i) Loss on transfer of short-term capital assets		10,000
	(ii) Gains on transfer of long-term capital assets comprising of shares & securities		1,00,000
V	Income from other sources		80,000

It is found that the following unabsorbed loss and allowances have been brought forward—

(i)	Unabsorbed share speculation loss of 1967-68 assessment year	10,000
(ii)	Unabsorbed depreciation	25,000

(Burdwan University—M. Com.)

ANSWER

Computation of total income for the Assessment year 1970-71.

Interest on securities	Rs.	5,000	
Income from House Property		25,000	
Speculation Business Profit—			
Profit in share speculation	Rs.	50,000	
Less : Unabsorbed speculation loss of 1967-68		10,000	
	Rs.	40,000	
Less : Loss in Jute speculation		20,000	20,000
“Long-term” Capital Gains (Comprising of shares & securities)			1,00,000
Income from other sources			80,000
			<u>Rs. 2,30,000</u>
Less : Loss on transfer of “short-term” Capital assets	Rs.	10,000	
Manufacturing Business Loss—			
Loss before allowance of depreciation and development Rebate	Rs.	25,000	
Carried over	Rs.	25,000	Rs. 10,000
			<u>Rs. 2,30,000</u>

	Brought Forward	Rs. 25,000	10,000	2,30,000
Add : Unabsorbed Depreciation for the year	Rs. 25,000			
	60,000	85,000	1,10,000	1,20,000
				Rs. 1,10,000
Less : Development Rebate for the year				40,000
Gross Total Income				Rs. 70,000
Less : Deduction under Section 80T regarding Long-term Capital Gains.				
100 % of Rs. 5,000		Rs. 5,000		
65 % of 95,000		61,750		66,750
Total Income				Rs. 3,250

- Notes** (1) Depreciation is deductible in computing income, profits and gains from Business, Profession and Vocation [Section 32 (2)]. Unabsorbed Depreciation brought forward from an earlier year forms part of the Depreciation of the current year vide Chapter XIV § 9. (Page 170)
- (2) Development Rebate is deductible in computing total income from all heads of income [before any deduction under Chapter VI-A] [Section 33(2)]

Question No. 50.

A machine costing Rs. 10,00,000 was installed and brought into use on 30th June, 1967 by a company whose previous year ends on 31st March, annually. For the three years ended 31st March, 1968, 31st March, 1969 and 31st March, 1970 the machine worked as under—

	Year ended 31. 3. 68	Year ended 31. 3. 69	Year ended 31. 3. 70
Single shift only ..	70 days	100 days	120 days
Two shifts only ..	90 days	120 days	120 days
Full three shifts ..	30 days	60 days	20 days

Assuming that extra-shift allowance is to be given and further that the normal rate of depreciation is 10% calculate the written down value of the machine on 1st April, 1970.

(Calcutta University—M. Com.)

ANSWER

	Assessment year 1968-69.	
Actual Cost on 30th June, 1967		Rs. 10,00,000
Normal Depreciation for single shift for 190 days (70+90+30) @ 10% of Rs. 10,00,000	Rs. 1,00,000	
Double shift for 120 days (90+30)		
120		
@ 50% of Rs. 1,00,000 X	20,000	
300		
Triple shift for 30 days		
30		
@ 100% of Rs. 1,00,000 X	10,000	1,30,000
300		
Written down value on 1. 4. 68	Carried over	Rs. 8,70,000

Brought Forward

Rs. 8,70,000

Assessment year 1969-70.

Normal Depreciation for single shift for 280 days (100+120+60) @ 10% of Rs. 8,70,000				Rs.	87,000	
Double shift for 180 days (120+60)						
			180			
@ 50% of Rs. 87,000	X		300		26,100	
Triple shift for 60 days.						
			60			
@ 100% of Rs. 87,000	X		300		17,400	1,30,500
Written down value on 1.4.69						Rs. 7,39,500

Assessment year 1970-71.

Normal Depreciation for single shift for 260 days (120+120+20) @ 10% of Rs. 7,39,500				Rs.	73,950	
Double shift for 140 days (120+20)						
			140			
@ 50% of Rs. 73,950	X		240		21,570	
Triple shift for 20 days						
			20			
@ 100% of Rs. 73,950			240		6,162	1,01,682
Written down value on 1.4.70						Rs. 6,37,818

Note : With effect from the assessment year 1970-71 the normal yearly number of working days for double shift and triple shift has been fixed at 240 or the actual number of working days, whichever is greater.

Question No. 51.

A Hindu undivided family consists of F and his three sons A, B, and C together with their wives and children. The family runs an agency business which is looked after by A in the capacity of an employee and for the services rendered to the said business he gets a salary of Rs. 1,000 per month from the agency business itself. The assessable profits of the family from the said business after charging A's salary are Rs. 1,00,000. F, A, B and C make monthly withdrawal of Rs. 1,500 each from the profits of the family business.

F holds a large number of shares in a private limited company, the share money having come out of the family's own funds. As a result of his large holding, F is a director in the company and during the year under review he received Rs. 6,000 as Director's fees and Rs. 20,000 (gross) as dividends from the company.

B runs a separate business of his own, the capital having been furnished by him out of his self-acquired property, and during the relevant year the assessable profits of the said business were Rs. 25,000.

C is a government servant drawing a salary of Rs. 2,500 per month.

F, A, B and C live together and have a joint mess.

On the basis of the abovenoted data state giving your reasons how you will treat the various items of income and allowances for purposes of income-tax assessments indicating clearly the particular persons in whose hands any particular item is to be charged or exempted.

(Calcutta University—M. Com.)

ANSWER

Assessment year 1970-71.

The Hindu Undivided Family will be assessed on the following incomes—

Agency Business	Rs. 1,00,000
Directors Fees and dividends received by F for utilising Family Funds [I.T.R. Vol. 37 (1959) page 123] [Supreme Court decision]	26,000
Gross Total Income	Rs. 1,26,000
Less : Dividends (Section 80L)	1,000
Total Income	Rs. 1,25,000

Monthly drawings of Rs. 1,000 by F, A, B, and C are not taxable in their hands in terms of Section 10(2).

A will be assessed on Rs. 12,000 being salary received from the family agency business.

B will be assessed on Rs. 25,000 being assessable profits from the business carried on by him with self-acquired capital.

C will be assessed on Rs. 30,000 being salary of Rs. 2,500 per month.

Question No. 52.

P.Q.R. is a firm in which P and Q are adult partners while R, a minor son of P, has been admitted only to the benefits of partnership. In the event of any profits from any source, the profit sharing ratio of P, Q and R is 3 : 2 : 1, while in the event of any loss from any source P and Q only are to share it equally. For its first year ending on 31st December 1969 the firm has applied for registration.

The results of the firm's trading and other activities for the year 1969 are as under—

(a) Agency business profits after charging Q's salary of Rs. 6,000	Rs. 30,000
(b) Loss in dealing in textile goods	70,000
(c) Dividends (Gross)	9,000
(d) Income from house properties	6,000

P runs a separate export and import business of his own in which he incurred a loss of Rs. 12,000 during the previous year ended 31st March, 1970 for the said export-import business.

P constructed a house in 1962 and gifted it to his wife. During the year to 31st March, 1970 Mrs. P received a rent of Rs. 12,000 and incurred the following expenses on the property—

(a) Owner's and occupier's shares of municipal tax	Rs. 600
(b) Repairing expenses	1,500
(c) Collection charges	1,200

P, Mrs. P, Q and R had no other income relative to the assessment year 1970-71 except those indicated above.

Compute the total income of P, Mrs. P, Q and R, if any, for the said assessment year 1970-71. Indicate your reasons for the inclusion or exclusion of any particular item for the purposes of any particular assessment.

(Calcutta University—M. Com.)

ANSWER

Computation of total income of the Firm PQR for the Assessment year 1970-71 allocated to the partners (Registration allowed).

	Total	P	Q	R
Agency Business Profits	Rs. 30,000	Rs. 15,000	Rs. 10,000	Rs. 5,000
Add : Salary paid to Q [Section 40 (b)]	6,000	..	6,000	..
Agency Business Profits	Rs. 36,000	Rs. 15,000	Rs. 16,000	Rs. 5,000
Loss in Textile goods	Rs. 70,000	Rs. 35,000	Rs. 35,000	..
Dividends (Gross)	Rs. 9,000	Rs. 4,500	Rs. 3,000	Rs. 1,500
Less : Deductions (Section 80L)	1,000	500	267	133
	Rs. 8,000	Rs. 4,000	Rs. 2,733	Rs. 1,367
Income from House Properties	Rs. 6,000	Rs. 3,000	Rs. 2,000	Rs. 1,000

Computation of total income of "R" for the Assessment year 1970-71.

Agency Business Profits	Rs. 5,000
Dividends (Gross)	1,367
Income from House Property	1,000
Total Income included in the Assessment of father "P" (In terms of Section 64)	Rs. 7,367

Computation of total income "P" for the Assessment year 1970-71.

Income from House Property gifted to Mrs. P. (In terms of Section 64)

Annual value (Rental)	Rs. 12,000
Less : M. Tax paid	600
	Rs. 11,400
Less : Statutory Allowance for repairs @ 1/6th Collection charges @ 6% of Rs. 11,400 (Rounded off)	Rs. 1,900 680
	2,580
Carried over	Rs. 8,820

Brought Forward		Rs. 8,820
Income of Minor son "R"		7,367
Agency Business Profits	15,000	
Dividends	4,000	
Income from House Property	3,000	22,000
		<hr/>
Loss in Textile goods		Rs. 38,187
		35,000
		<hr/>
Loss in Export & Import business		Rs. 3,187
		12,000
		<hr/>
Loss in Export & Import business carried forward to the Assessment year 1971-72 (Rounded off)		Rs. 8,810
		<hr/>

**Computation of total income of "Q"
for the Assessment year 1970-71.**

Agency Business Profits	Rs. 16,000
Dividends	2,733
Income from House Property	2,000
	<hr/>
Loss in Textile goods	Rs. 20,733
	35,000
	<hr/>
Loss in Textile goods carried forwarded to the Assessment year 1971-72 (Rounded off)	Rs. 14,270
	<hr/>

Question No. 53.

Explain with reasons if the following items are allowable as deductions in computing income from Business or Profession.

[Calcutta University—B. Com. (Hons.)]

(A) Loan by a solicitor to a client written off being irrecoverable.

ANSWER Loan by a solicitor to a client is not his normal professional activities and as such the irrecoverable loan written off cannot be allowed as "bad debt". The irrecoverable loan can be allowed as business loss in the hands of a money-lender or a banker whose normal business activities are lending money.

(B) Legal Expenses incurred in exercise of one's pre-emption rights in respect of adjoining land which if acquired could be used with advantage for business of the assessee.

ANSWER Legal Expenses incurred for acquiring adjoining land which could be used for enlargement of business activities in future are capital expenditures and as such are not admissible in computing income from business.

(C) Goods withdrawn for private use of the Proprietor by making payment of only 60% of the cost.

ANSWER When goods are withdrawn for private use of the Proprietor there cannot be any Profit & Loss from that transaction for Income-tax purposes. One cannot earn any profit in the process of consuming any food or clothing etc. while he is a dealer in those goods. In this particular case the profit from the business which has been under-computed should be increased by 40% of the cost (100% less payment of 60% of the cost).

(D) Accountancy charges for carrying investigation for a number of years which are under disclosure.

ANSWER Normal accountancy charges for current year are admissible in computing the income from business. But accountancy charges for a number of past years are not admissible for computing the income of the current year. In addition, since the income of the earlier years has been determined and finalised any accountancy charges not provided in the accounts of those years can not be deducted in computing income under mercantile system of accounting.

(E) Expenses incurred in the laying of the foundation with a view to install machinery, but later the place being unsuitable, no machinery was installed at the place.

ANSWER Expenses incurred in laying foundation for installation of machinery are capital expenditures and as such should be disallowed in computing income from business.

(F) Theft of Rs. 25,000 from the business-cash of a money-lending Business. The theft was made by the Cashier. Is the loss admissible?

ANSWER The loss arising out of theft of Rs. 25,000 from the business-cash by the Cashier is admissible in computing the income from the money-lending business. The theft by the Cashier in the course of normal business transactions (as opposed to a theft by an outsider) is an admissible expenses for earning the business profit.

(G) A Bank failed to recover a sum of Rs. 15,000 out of a loan of Rs. 40,000 granted to a client in the ordinary course of business. Is the irrecoverable amount deductible?

ANSWER The irrecoverable amount of the loan granted by a Bank to a client in the ordinary course of business is an admissible expense for earning the business profit provided the amount has been written-off in the books of the Bank. Money lent on interest is the stock-in-trade of a Banker and the loss of such stock-in-trade should be regarded as a trading loss.

(H) Customs rules were infringed in the matter of importing goods and a penalty of Rs. 10,000 were levied on that account. Is the amount of penalty deductible?

ANSWER Penalty of Rs. 10,000 levied for infringement of customs rules is not an admissible expense in computing the business profit. The expense was not incurred for the purpose of carrying on the normal business activities. [Vide I. T. R. Vol. 41 (1961) page 350]

(I) Loan of Rs. 10,000 was taken for purchase of capital goods and interest of Rs. 10,000 was paid thereon in the year 1969. Is the amount of interest admissible as a deduction?

ANSWER Interest of Rs. 10,000 paid on a loan of Rs. 1,00,000 taken for purchase of capital goods is an admissible deduction in computing the business profit. According to Section 36 (1) (iii) interest paid on capital borrowed for the purchase of the business is admissible even when the amount of loan is utilised for purchase of capital goods.

(J) A factory was shifted from one place to other for better and easier supply of raw materials. Is the claim for deduction from the assessable profits of the expenditure incurred in shifting the factory tenable?

ANSWER The expenses incurred in shifting the factory from one place to another is not an admissible deduction in computing the assessable business profits even when the shifting will facilitate the supply of raw materials. The expenses would be treated as capital expenditures and as such inadmissible.

Question No. 54.

State giving reasons the name of the particular head of income under which the items of income described below are to be included

[Calcutta University—B. Com. (Hons.)]

(A) Dividends received by a dealer in stocks and securities on shares held by him as stock-in-trade of his share-dealing business.

ANSWER Normally dividends are assessable as "income from other sources" [Section 56 (2) (i)] but as the assessee, in this case, is holding the shares as his stock-in-trade, the dividends received by him should be assessed as income from "business". It was observed by the Hon'ble Supreme Court in *Bengal and Assam Investors Ltd. vs. Commissioner of Income-tax* [as reported in *Income-tax Reports Vol. 59 (1966) page 547*] as follows—"It seems to us that, on principle, before dividends on shares can be assessed under Section 10 (old Section—"business" head), the assessee, be it an individual or a company or any other entity must carry on business in respect of shares that is to say, the assessee must deal in those shares" (systematically buying and selling).

(B) Rent realised from employees for accommodation provided to them by the employer where such accommodation is owned by the employer and the occupation thereof by the employees facilitates the carrying on the business of employer in which the employees are working.

ANSWER Normally rent realised from let-out properties is assessable as "income from House Property". But if rent is realised from employees where the occupation facilitates the carrying on the business of the employer, the amount should be assessed as "income from business". It was held by the Hon'ble Punjab High Court in Commissioner of Income-tax, Delhi and Rajasthan vs. Delhi Cloth and General Mills Co. Ltd. [as reported in Income-tax Reports Vol. 59 (1966) page 152] that the income of the assessee from the buildings or lands appurtenant thereto rented to its employees was income from business and fell for assessment under Section 10 (old Section) of the Indian Income-tax Act, 1922 "Income from Business" and not under Section 9 (old Section) as "Income from Property".

(C) Fees received by a director of a company for attending the Board meetings of the said company.

ANSWER Director's fees are assessable as "Income from other sources".

(D) Remuneration received by a practising Chartered Accountant from the University for services there as a part-time lecturer.

ANSWER Remuneration received for serving as a part-time lecturer is assessable as "Salary". The relationship between the payer and the payee, in this case, is that of the employer and the employee.

(E) Remuneration received by a practising lawyer from the University for examining answer scripts of candidates sitting at the Law Examinations of the University.

ANSWER Remuneration received for examining answer scripts is assessable as "Income from other sources".

Question No. 55.

"T", the partner of a registered firm and also having several other sources of income, furnishes the following particulars in respect of his assessment for the year 1970-71.

		Profit/Loss
I.	Income from house property	+ Rs. 6,000
II.	Interest on Securities	+ Rs. 2,000
III	Profits & Gains of business or profession :	
	Business "A" : Trading Profit	(+) Rs. 10,000
	Depreciation	Rs. 6,000
	Development Rebate	Rs. 8,000
	Business "B" : Trading Profit	(+) Rs. 50,000
	Depreciation	Rs. 12,000
	Share in Registered firm : Loss	(-) Rs. 15,000
IV.	Income from other sources :	
	Dividends (Gross)	+ Rs. 2,000

Interest on loan taken by "T" for
Purchase of shares on which the
dividend was earned

Rs. 600

V. Capital gains :

Short-term capital gains

+ Rs. 12,000

It is found that unabsorbed depreciation and unabosorbed development rebate, both relating to Business "B", amounting to Rs. 15,000 and Rs. 12,000 respectively are brought forward from the assessment year 1969-70. From Business "A" unabsorbed loss of Rs. 20,000 is brought forward from the assessment year 1969-70.

Compute the total income of "T" for the assessment year 1970-71.

(Calcutta University—M. Com.)

ANSWER

Computation of total income of "T" for the
Assessment year 1970-71.

Business "A"

Trading Profit	Rs. 10,000	
Less : Depreciation for the Current Year	6,000	Rs. 4,000

Less : Unabsorbed loss carried over from the assessment year 1969-70		4,000
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Nil

Business "B"

Trading Profit	Rs. 50,000	
Less : Depreciation for the Current Year	12,000	Rs. 38,000

Less : Unabsorbed loss of Business "A" carried over from the assessment year 1969-70		16,000
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Rs. 22,000
15,000

Less : Loss in Registered Firm

Business Profit

Add : Income from House Properties		Rs. 7,000
Interest on Securities		6,000
Dividends (Gross)		2,000

Less : Interest on Loan	Rs. 2,000	
	600	1,400

Short-term Capital Gains		12,000
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Rs. 28,400

Less : Unabsorbed Development Rebate of
Business "B" carried over from the
assessment year 1969-70

12,000

Rs. 16,400

Less : Development Rebate of Business "A"
for the Current year

8,000

Carried over

Rs. 8,400

	Brought Forward	Rs. 8,400
Less :	Unabsorbed Depreciation of Business "A" carried over from the assessment year 1969-70	15,000
	Unabsorbed Depreciation of Business "A" carried over to the assessment year 1971-72	Rs. 6,600
	Total Income for the assessment year 1970-71	Nil

- Notes :
- (1) Depreciation for current year is deductible in computing income, profits and gains from Business, profession and vocation [Section 32(2)]
 - (2) Development Rebate is deductible in computing total income from all heads of income [before any deduction under Chapter VIA [Section 33(2)]]
 - (3) Business loss can be carried forward for 8 years, unabsorbed development rebate can be carried forward for 8 years, whereas unabsorbed depreciation can be carried forward for more than 8 years. In carrying forward (a) "business loss" (b) "unabsorbed development rebate" and (c) "unabsorbed depreciation" priority should be given to (a) thereafter to (b) and lastly to (c). [(Section 72(2)).
 - (4) Loss in Business "A" carried forward from the assessment year 1969-70, can be set off against the profit of business "B" as the business "A" has been continued in the assessment year 1970-71 [Section 72(1) (i) Proviso].
 - (5) Deduction of Rs. 1,000 from "Dividends" in terms of Section 80L cannot be effected as the "total income" for the assessment year 1970-71 is Nil.

Question No. 56

Dr. V. D. Pande is a medical practitioner and has summarized his cash dealings for the year 1969 as under :

Receipts :		Payments :	
To Balance B/d.	Rs. 4,544	By Income-Tax	Rs. 700
„ Consultation Fees	3,854	„ Rent of the Clinic	500
„ Visiting Fees	3,000	„ Household Expenses	3,000
„ Loan from Bank	1,500	„ Car Expenses	1,000
„ Sale of Medicines	5,000	„ Cost of Medicines	4,000
„ Gains on race	1,500	„ Local Taxes of House	180
„ Profit on sale of Securities	1,000	„ Surgical Equipment	2,000
„ Gifts from patients	1,500	„ Purchase of Scooter	2,500
„ Interest on P. O. S/B A/c.	100	„ Interest on Loan	100
„ Dividends (Gross)	1,400	„ Donation to approved institution	500
„ Rent from House Property	1,800	„ Salary to compounder	900
		„ Life Insurance Premium	500
		„ Gift to Sister	400
		„ Loan repaid	1,500
		„ Balance C/d.	7,418
	<u>25,198</u>		<u>25,198</u>

Allowable depreciation on surgical equipment is Rs. 500. One-fourth of the car expenses are considered to be for personal use.

You, as an Income-Tax Consultant, are required to prepare a statement showing his profit from profession and also his total taxable income.

[Sambalpur University—B. Com. (Hons.)]

ANSWER

Computation of total income for the Assessment year 1970-71.

Income from medical profession and business.			
Sale of medicines	Rs.	5,000	
Consultation Fees		3,854	
Visiting Fees		3,000	
Gift from Patients		1,500	
		<hr/>	Rs. 13,354
Less : Cost of medicine	Rs.	4,000	
Rent of the Clinic		500	
Car Expenses	Rs. 1,000		
Less : Personal		250	
		<hr/>	750
Interest on Loan		100	
Salary to Compounder		900	
Depreciation		500	
		<hr/>	6,750
			<hr/>
			Rs. 6,604
Income from House Property :			
Rent realised	Rs.	1,800	
Less : Local Taxes		180	
		<hr/>	
	Rs.	1,620	
Less : Statutory Allow. 1/6th.		270	
		<hr/>	1,350
Income from other sources :			
Dividends (Gross)			1,400
			<hr/>
			Rs. 9,354
Less : Life Insurance Premium			
60% of Rs. 500 (80C)	Rs.	300	
Donation to App. Inst.			
55% of Rs. 500 (80G)		275	
Dividends (80L)		1,000	
		<hr/>	1,575
			<hr/>
Total Income (Rounded off)			Rs. 7,780

Notes :—(1) Opening balance of Rs. 4,544 and closing balance of Rs. 7,418 are neither income nor expense.

(2) Loan from Bank Rs. 1,500 and Loan repaid Rs. 1,500 are capital receipt and capital repayment—Interest on Loan paid Rs. 100 is admissible expense.

(3) Gains on race—Rs. 1,500 are casual income and non-taxable [Section 10(3)]

- (4) Profit on sale of securities Rs. 1,000 is treated as "Long-term Capital Gains" and as it is less than Rs. 5,000 it is non-taxable [Section 80T]
- (5) Gifts from Patients Rs. 1,500 is taxable in terms of Section 28(iv)
- (6) Interest on P. O. Saving Bank A/c. Rs. 100 is not taxable in terms of Section 10(15) (ii)
- (7) Income-tax paid—Rs. 700 ; Household expenses Rs. 3,000 ; Car expenses Rs. 250—are personal expenses.
- (8) Surgical Equipment Rs. 2,000 ; Purchase of Scooter Rs. 2,500 are Capital Expenditures.
- (9) Gift to sister Rs. 400 is personal expense.

Question No. 57

The assessments of M. Co. Ltd. an Indian company, for the years 1969-70 and 1970-71 show the following results.

		Assessment year 1969-70.	Assessment year 1970-71
1. Interest on securities	(+)	2,000	(+) 2,000
2. Income from house property	(+)	8,000	(+) 8,000
3. Profits and gains of business or profession			
(a) Dealing in fruits	(-)	30,000	(-) 12,000
(b) Manufacturing glass— Profit before depreciation and development rebate	(+)	50,000	(+) 1,40,000
Depreciation		80,000	75,000
Development Rebate		15,000	20,000
(c) Speculative transactions	(+)	6,000	(-) 9,000
4. Income from other sources	(-)	2,000	(+) 5,000
5. Capital gains-Short-term		—	(-) 25,000

Compute the net assessable results for each of the two years giving full reasons for your workings

(Calcutta University—M. Com.)

ANSWER

Assessment year 1969-70.

Interest on Securities		Rs. 2,000
Income from House Property		8,000
		<hr/>
		Rs. 10,000
Less : Loss under the head "Income from other sources"		2,000
		<hr/>
		Rs. 8,000
Income from Speculative Business	Rs. 6,000	
Less : Business Loss in Dealings in fruits	30,000	24,000
	<hr/>	<hr/>
Business Loss A/c. Dealings in fruits carried forward to the assessment year 1970-71		Rs. 16,000
		<hr/>

Profit of Manufacturing Glass Business	Rs. 50,000
Less : Depreciation	80,000
	<hr/>
Unabsorbed Depreciation to be carried forward to the assessment year 1970-71	Rs. 30,000
	<hr/>
Unabsorbed Development Rebate to be carried forward to the assessment year 1970-71	Rs. 15,000
	<hr/>

Assessment year 1970-71

Profit of manufacturing Glass business	Rs. 1,40,000
Less : Depreciation for the year	75,000
	<hr/>
	Rs. 65,000
Less : Business Loss A/c. Dealings in fruits for the Current year	12,000
	<hr/>
	Rs. 53,000
Less : Business Loss A/c. Dealing fruits carried forward from the assessment year 1969-70	16,000
	<hr/>
	Rs. 37,000
Add : Interest on Securities	Rs. 2,000
Income from House Property	8,000
Income from other sources	5,000
	<hr/>
	Rs. 52,000
Less : Loss in short-term capital Asset for the current year	25,000
	<hr/>
	Rs. 27,000
Less : Unabsorbed development rebate carried forward from the assessment year 1969-70	15,000
	<hr/>
	Rs. 12,000
Less : Development Rebate for the current year	20,000
	<hr/>
Unabsorbed Development Rebate to be carried forward to the assessment year 1971-72	Rs. 8,000
	<hr/>
Unabsorbed Depreciation to be carried forward to the assessment year 1971-72	Rs. 30,000
	<hr/>
Loss in Speculative Business to be carried forward to the assessment year 1971-72	Rs. 9,000
	<hr/>

Notes :—(1) Depreciation for current year is deductible in computing income, profits and gains from business, Profession and vocation [Section 32(2)].

- (2) Development Rebate is deductible in computing total income from all heads of income (before any deduction under Chapter VIA) [Section 33(2)].
- (3) Business Loss can be carried forward for 8 years, unabsorbed development rebate can be carried forward for 8 years, whereas unabsorbed depreciation can be carried forward for more than 8 years. In setting off carried forward (a) "business loss" (b) "unabsorbed development rebate" and (c) "unabsorbed depreciation" priority should be given to (a) thereafter to (b) lastly to (c) [Section 72(2)].
- (4) Business Loss in dealings in fruit carried forward from the assessment year 1969-70 can be set off against the profit of manufacturing Glass business as the fruit dealing business has been continued in the assessment year 1970-71.

Question No. 58.

B, a resident individual, retired from employment with P Co. Ltd. after 1st completed years of service on 30th June, 1969 and was granted by the company a pension of Rs. 500 per month with effect from 1st July, 1969. He was also paid a retiring gratuity of Rs. 30,000. He received from the recognised provident fund of which he was a member from the commencement of his service to the date of retirement the sum of Rs. 1,00,000 being the balance standing to his credit on 30th June, 1969.

After retirement he joined R Co. Ltd. as its Executive Officer on a contract for 3 years commencing on 1st October, 1969. The particulars of his remuneration from the two companies during the year to 31st March, 1970 for the respective period of service with them, besides what have been stated above, were as under :

	P Co. Ltd.	R Co. Ltd.
Salary	Rs. 3,000 per month (since 1962)	Rs. 1,800 per month
Entertainment allowance	Rs. 500 per month (since 1953)	Rs. 600 per month
Employer's contribution to provident Fund	Rs. 400 per month	—
Own contribution to the fund	Rs. 400 per month	—
House rent allowance	Rs. 500 per month	Rs. 500 per month

B occupied throughout the year a house at Calcutta for which he paid rent @ Rs. 550 per month. He owned a car of 15 h.p. which he used for personal as well as official purposes. His actual expenses on the car for the relevant periods of service were met by the respective companies, such expenses uniformly working out at Rs. 480 per month. During the year he paid life insurance premium of 12,000 on a policy on his own life the capital sum assured being Rs. 1,00,000. Assuming that he had no income other than what has been stated here compute B's total income for the assessment year 1970-71 indicating your reasons for the particular manner in which you treat any item in your answer.

ANSWER.

**Computation of total income for the year
ended 31.3.70—Assessment year 1970-71**

Salary from P. Co. Ltd.		
for April, May and June, 1969 @ Rs. 3,000 per month		Rs. 9,000
Pension July, 1969—March 1970 @ Rs. 500 per month		4,500
Employers' Contribution to Prov. Fund	Rs. 1,200	
Less : Tax-free 10% of Rs. 9,000	900	300
		<hr/>
House Rent Allowance	Rs. 1,500	
Less : Tax-free as per Note (2)	750	750
		<hr/>
Perquisite a/c. Motor car as per Note (4)		480
Gratuity as per Note (5)	Rs. 30,000	
Less : Exempted in terms of Section 10(10)	22,500	7,500
		<hr/>
		Rs. 22,530
Salary from R. Co. Ltd.		
for Oct. '69 to March '70 @ Rs. 1,800 (P.M.)	Rs. 10,800	
Entertainment Allow. as per Note (1)	3,600	
House Rent Allowance	Rs. 3,000	
Less : Tax-free as per Note (3)	1,800	1,200
		<hr/>
Perquisite a/c. Motor Car as per Note (4)	960	16,560
		<hr/>
Gross Total Income		Rs. 39,090
Less : Prov. Fund 3×400		
Life Insurance Premium	Rs. 1,200	
10% Rs. 1,00,000	10,000	
		<hr/>
	Rs. 11,200	
		<hr/>
60% of Rs. 5,000	Rs. 3,000	
50% of Rs. 6,200	3,100	6,100
		<hr/>
Total Income		Rs. 32,990
		<hr/>

Notes : (1) Entertainment Allowance received from P. Co. Ltd. at the rate of Rs. 500 per month is tax-free as the amount is less than 20% of Rs. 3,000. Entertainment Allowance received from R. Co. Ltd. at the rate of Rs. 600 per month is taxable in full.

(2) (a) House Rent Allowance received from P Co. Ltd.	Rs. 1,500
(b) House Rent paid by "B"	
Rs. 550×3 less 10% of Rs. 9,000	Rs. 750
(c) 20% of Salary of Rs. 9,000	Rs. 1,800
(d) Rs. 300 p.m, from April-June, 1969	Rs. 900

- | | | |
|---------|---|------------|
| (3) (a) | House Rent Allowance received from R. Co. Ltd. | Rs. 3,000 |
| | (b) House Rent paid by "B" | |
| | Rs. 550×6 less 10% of Rs. 10,800 | Rs. 2,220 |
| | (c) 20% of Salary of Rs. 10,800 | Rs. 2,160 |
| | (d) Rs. 300 p.m. from Oct. 1969—March, 1970 | Rs. 1,800 |
| (4) | Estimated taxable Perquisite in respect of Motor Car Rs. 160 per month being $\frac{1}{3}$ rd of total expense of Rs. 480 per month. [Rule 3(i)(iii)] | |
| (5) (a) | Average monthly Salary | Rs. 3,000 |
| | (b) One-half month's basic salary for each year of completed service Rs. $3,000 \times \frac{1}{2} \times 15$ | Rs. 22,500 |
| | (c) 15 months basic salary | Rs. 45,000 |
| | (d) Maximum Account | Rs. 24,000 |
| (6) | Repayment from Recognised Provident Fund at the time of retirement should be excluded from the computation of total income. [Section 10(12)] | |

Question No. 59.

The particulars of assessable profit or loss of G. Co. Ltd. for the assessment year 1970-71 are as under—

Income from house property	(+)	Rs. 12,000
Profits & gains of business or profession		
A. Trading in Cloth		
Loss before charging depreciation	(—)	15,000
Depreciation		18,000
B. Manufacturing small tools		
Profit before depreciation and development rebate	(+)	70,000
Depreciation		30,000
Development rebate		12,000
C. Loss from speculative transactions	(—)	20,000
Income from other sources		
Sundry interest	(+)	5,000

It is learnt that unabsorbed cloth business loss and unabsorbed depreciation in respect of small tool manufacturing business of Rs. 5,000 and Rs. 12,000 respectively as also unabsorbed development rebate of Rs. 10,000 in respect of small tool manufacturing business are being brought forward from the assessment year 1969-70.

Compute the net assessable result for the assessment year 1970-71 stating your reasons for the manner of treatment of any particular item and also indicate what items, if any, are to be carried forward to subsequent assessments.

(Burdwan University—M. Com.)

ANSWER**Assessment year 1970-71**

Small tools manufacturing business-Profit	Rs. 70,000
Less : Depreciation	
Small tools	Rs. 30,000
Cloth business	18,000
	<hr/>
	48,000
	<hr/>
	Rs. 22,000
Less : Loss in Cloth business for the Current Year	15,000
	<hr/>
	Rs. 7,000
Less : Unabsorbed loss of Cloth business carried over from the assessment year 1969-70	5,000
	<hr/>
Business Profit	Rs. 2,000
Add : Income from House Property	12,000
Income from other sources	5,000
	<hr/>
	Rs. 19,000
Less : Unabsorbed development rebate in respect of small tools manufacturing business carried over from the assessment year 1969-70	10,000
	<hr/>
	Rs. 9,000
Less : Development rebate in respect of small tools manufacturing business for the current year	12,000
	<hr/>
Unabsorbed Development Rebate in respect of small tools manufacturing business carried over to the assessment year 1971-72	Rs. 3,000
	<hr/>
Unabsorbed Depreciation of Rs. 12,000 in respect of small tools manufacturing business carried over from the assessment year 1969-70 will be carried over to the assessment year 1971-72	
	<hr/>
Loss from speculative transactions of Rs. 20,000 will be carried over to the assessment year 1971-72	
	<hr/>

- Notes :—**(1) Depreciation for current year is deductible in computing income, profits and gains from business, Profession and vocation [Section 32(2)]. Where more than one business is carried on and the profits of any one of them are insufficient to cover the full depreciation admissible for that particular business, the excess depreciation can be set off against the profits of other business.
- (2) Development Rebate is deductible in computing total income from all heads of income (before any deduction under Chapter VIA) [Section 33(2)]

- (3) Business Loss can be carried forward for 8 years, unabsorbed development rebate can be carried forward for 8 years, whereas unabsorbed depreciation can be carried forward for more than 8 years. In setting off carried forward (a) "business loss" (b) unabsorbed development Rebate" and (c) "unabsorbed depreciation" priority should be given to (a) thereafter to (b) and lastly to (c) [Section 72(2)]
- (4) Loss in cloth business carried forward from the assessment year 1969-70 can be set off against the profit of small tools manufacturing business as the cloth business has been continued in the assessment year 1970-71.

Question No. 60.

The Profit & Loss Account for the year ended 30th June, 1969 of Arun & Sons, a proprietary concern, is as follows :

Dr.				Cr.
	Rs.			Rs.
To Opening stock	50,000	By Sales		19,40,000
„ Purchases	12,00,000	„ Closing Stock		60,000
„ Wages	3,00,000			
„ Salaries	1,00,000			
„ Interest	45,000			
„ Customs duty	12,000			
„ General Charges	63,000			
„ Depreciation	35,000			
„ Income-tax	55,000			
„ Development rebate				
Reserve	18,000			
„ Net Profit	1,22,000			
	<u>Rs. 20,00,000</u>			<u>Rs. 20,00,000</u>

The following particulars are available :

- (i) Both the opening and closing stock are valued 20% under cost.
- (ii) 'Wages' includes a sum of Rs. 5,000 paid to the proprietor's domestic servants.
- (iii) 'Interest' includes Rs. 10,000 paid in respect of a loan taken to purchase a machine which was installed on 1st October '68.
- (iv) 'Customs duty' includes Rs. 4,000 for clearing the machine referred to in (iii).
- (v) Depreciation debited represents the amount admissible for income-tax purposes.
- (vi) Development rebate reserve represents 75% of the amount of the development rebate admissible.

Compute the total income of the proprietor on the basis of the above-noted data giving your reasons wherever necessary.

ANSWER

- (1) The opening stock should be increased by Rs. 12,500 ($\text{Rs. } 50,000 \div 25$). The closing stock should similarly be increased by Rs. 15,000 ($\text{Rs. } 60,000 \div 25$). The net Profit as per Profit & Loss Account, should therefore, be increased by Rs. 2,500.
- (2) Rs. 5,000 paid to the proprietor's domestic servants should be disallowed.
- (3) Rs. 4,000 paid as customs duty for clearing the machine should be disallowed as capital expenditure.
- (4) Rs. 10,000, paid as interest on loan taken to purchase a machine is an admissible expense. [Section 36(1) (iii)].

**Computation of total income of Arun & Sons for the year ended
30th June, 1969—Assessment year 1970-71.**

Net Profit as per Profit & Loss A/c.		Rs. 1,22,000
Add : Adjustment re-Opening and Closing stock		2,500
Domestic Servant's Wages		5,000
Customs Duty paid		4,000
Depreciation		35,000
Development Rebate Reserve		18,000
Income-tax		55,000
		<hr/>
		Rs. 2,41,500
Less : Depreciation for Income-tax purpose	Rs. 35,000	
Development Rebate	24,000	59,000
	<hr/>	<hr/>
Total Income		Rs. 1,82,500
		<hr/>

APPENDIX—A

Depreciation Allowance as amended upto the 30th June, 1970

The allowance under clause (i) or clause (ii) of sub-section (1) of Section 32 in respect of depreciation of buildings, machinery, plant or furniture shall be calculated at the percentage specified in the second column on the actual cost or, as the case may be the written down value of such assets as are used at any time during the previous year.

Provided that in a case where the assessee has been allowed to vary the meaning of the expression "previous year" in respect of business or profession under sub-section (4) of Section 3 and, thereby, his income from such business or profession for a period of thirteen months or more is included in his total income of any previous year, the allowance referred to in this sub-rule, calculated in the manner stated herein above, shall be increased by multiplying it by a fraction of which the numerator is the number of complete months in such previous year and the denominator is twelve.

Class of asset	Depreciation allowance as percentage of (i) actual cost in the case of ocean—going ships ; (ii) written down value in the case of any other asset.	Remarks
1	2	3

1. Buildings

(1) First class substantial buildings of selected materials.	2.5	Double these rates will be taken for factory buildings excluding offices, godowns, officers and employees' quarters.
(2) Second class buildings of less substantial construction.	5	
(3) Third class buildings of construction inferior to that of second class buildings but not including purely temporary erections.	7.5	
(4) Purely temporary erection such as wooden structures.	100	

1	2	3
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II. Furniture and fittings—

- | | |
|---|----|
| (1) General rate. | 10 |
| (2) Rate for furniture and fittings used in hotels ; restaurants and boarding houses ; schools, colleges and other educational institutions ; libraries ; welfare centres ; meeting halls ; cinema houses, theatres and circuses ; and for furniture and fittings let out on hire for use on the occasion of marriages and similar functions. | 15 |

III. Machinery and plant (not being a ship).

- | | |
|--|----|
| (i) General rate applicable to machinery and plant (not being a ship) for which no special rate has been prescribed under item (ii) hereinbelow. | 10 |
| (ii) Special rates : | |
| A. (1) Hydraulic works, pipelines and sluices (N.E.S.A.) | |
| (2) Overhead cables and wires (N.E.S.A.) | |
| (3) Salt Works-Reservoirs, Condensers Salt Pans, delivery channels and piers, if constructed of masonry, concrete, cement, asphalt or similar materials (N.E.S.A.) | 5 |
| B. (1) Accounting machines (N.E.S.A.) | |
| (2) Airconditioning Machinery including room air conditioners (N.E.S.A.) | 1 |
| (3) Artificial Silk Manufacturing Machinery and Plant except wooden parts. | |
| (4) Building Contractor's Machinery (N.E.S.A.) | |
| (5) Brick and Tile Manufacture—wooden shelves and pallets. | |

- | 1 | 2 | 3 |
|---|---|---|
| (6) Calculating machines
(N.E.S.A.) | | |
| (7) Machinery and plant coming into contact with corrosive chemicals. | | |
| (8) Machine Tools— | | |
| (a) Automatic and semi-automatic ; | | |
| (b) Precision machine tools, e. g., grinding machines. | | |
| (9) Mineral oil concerns-field operations (Distribution) Kerbside pumps including underground tanks and pumps (N.E.S.A.) | | |
| (10) Mines and Quarries-Surface and underground machinery (other than electrical machinery, boilers and portable underground machinery). head-gear, moving parts and rails (N.E.S.A.) | | |
| (11) Neo-post Franking Machine (N.E.S.A.) | | |
| (12) Office Machinery (N.E.S.A.) | | |
| (13) Refrigeration Plant Containers, etc. (other than racks) (N.E.S.A.) | | |
| (14) Road making plant and machinery. | | |
| (15) Ropeway structures—carriers. | | |
| (16) Rubber and Plastic goods factories-General machinery and plant. | | |
| (17) Salt works-Machinery, plant, locomotives, wagons and rolling stock. | | |
| (18) Sewing and knitting machines employed in the manufacture of Hosiery and woollen goods. | | |
| (19) Sewing and stitching machines for canvas or leather. | | |
| (20) Surgical instruments (N.E.S.A.) | | |

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<p>(21) Tea factories—General machinery and plant including rollers and driers.</p> <p>(22) Tramways Electric and tramways run by internal combustion engines—Permanent way exceeding 1,25,000 car kilometres per kilometre of track per annum (N.E.S.A.)</p> <p>(23) Typewriters (N.E.S.A.)</p> <p>(24) Wireless apparatus and gear, wireless appliances and assessories (N.E.S.A.)</p>	15	
<p>C. (1) Cinematograph films—Machinery used in the production and exhibition of cinematograph films (N.E.S.A.)</p> <p>(a) Recording equipment, reproducing equipment, developing machines, printing machines, editing machines, synchronisers and studio lights except bulbs.</p> <p>(b) Projecting equipment of film exhibiting concerns.</p> <p>(2) Cycles (N.E.S.A.)</p> <p>(3) Data proceeding machines including computers (N.E.S.A.)</p> <p>(4) Electrical machinery — Batteries ; X-ray and Electrotherapeutic apparatus and accessories thereto (N.E.S.A.)</p> <p>(5) Glass manufacturing concerns except Direct Fire Glass Melting Furnaces—Recuperative and Regenerative Glass Melting Furnaces.</p> <p>(6) Juice boiling pans (karhais) (N.E.S.A.)</p> <p>(7) Motor cars, motor cycles, scooters and other mopeds (N.E.S.A.)</p>	20	

1	2	3
(8) Sugar Cane crushers (indigenous Kolhus and Belans) (N.E.S.A.)	20	
D. (1) Aeroplanes-Aircraft, Aerial photographic apparatus (N.E.S.A.)		
(2) Concrete Pipes manufacture—Moulds (N.E.S.A.)		
(3) Drum Container manufacture—Dies (N.E.S.A.)		
(4) Earth moving machinery employed in heavy construction works, such as dams, tunnels, canals, etc. (N.E.S.A.)		
(5) Glass manufacturing concerns except Direct Fire Glass Melting Furnaces—Moulds (N.E.S.A.)		
(6) Moulds in Iron Foundries (N.E.S.A.)	30	
(7) Mineral oil concerns—Field operations (above ground)—Portable boilers, drilling tools, wellhead tanks, rigs, etc. (N.E.S.A.)		
(8) Mines and quarries—Portable underground machinery and earth moving machinery used in open cast mining (N.E.S.A.)		
(9) Motor buses, motor lorries, motor taxies, motor tractors (N.E.S.A.)		
(10) Patterns, dies and templates (N.E.S.A.)		
(11) Ropeway structures—Ropeways ropes and trestle sheaves and connected parts (N.E.S.A.)		
(12) Shoe and other leather goods factories—wooden lasts used in the manufacture of shoes.		
E. (1) Aeroplanes—Aero-engines (N.E.S.A.)	40	
(2) Rubber and plastic goods factories—Moulds (N.E.S.A.)		

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F. (1) Artificial Silk Manufacturing Machinery—wooden parts.		
(2) Cinematograph films—Bulbs of studio lights.		
(3) Flour mills—Rollers.		
(4) Gas cylinders including valves and regulators.		
(5) Glass manufacturing concerns—Direct Fire Glass Melting Furnaces.		
(6) Iron and steel industry—Rolling mill rolls.		
(7) Match factories—Wooden match frames.		
(8) Mineral oil concerns—	100	
(a) Plant used in field operations (above ground)—Distribution-returnable packages.		
(b) Plant used in field operations (below ground) but not including assets covered by sub-item (ii) B(9) above.		
(9) Mines and quarries—		
(a) Tubs, winding ropes, haulage ropes & sand stowing pipes.		
(b) Safety lamps.		
(10) Salt works—Salt pans, reservoirs and condensers, etc., made of earthy, sandy or clayey material or any other similar materials.		
(11) Sugar works—rollers.		
(iii) Extra depreciation allowance for approved hotels : An extra allowance of depreciation of an amount equal to one-half of the normal allowance shall be allowed in the case of machinery and plant installed by an assessee, being an Indian company, in premises used by it as a		

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hotel where such hotel is for the time being approved by the Central Government for the purposes of Section 33 of the Act.

Explanation.—For the purposes of this sub-item and sub-item (iv), “normal allowance” means the amount of depreciation allowance under this sub-item or the extra shift depreciation allowance under sub-item (iv) which is allowable under rule 5.

(iv) Extra shift depreciation allowance :

An extra allowance upto a maximum of an amount equal to one-half of the normal allowance shall be allowed where a concern claims such allowance on account of double shift working and establishes that it has worked double shift. An extra allowance upto a maximum of an amount equal to the normal allowance instead of one-half of the normal allowance, shall be allowed where a concern claims such allowance on account of triple shift working and establishes that it has worked triple shift.

The calculations of the extra allowance for double shift working and for triple shift working shall be made separately in the proportion which the number of days for which the concern worked double shift or triple shift, as the case may be, bears to the nor-

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mal number of working days during the previous year. For this purpose, the normal number of working days during the previous year shall be deemed to be—

(a) in the case of a seasonal factory of concern, the number of days on which the factory or concern actually worked during the previous year or 180 days, whichever is greater ;

(b) in any other case, the number of days on which the factory or concern actually worked during the previous year or 240 days, whichever is greater.

Illustration

For example, where a non-seasonal concern worked 270 days during the previous year out of which it worked triple shift on 135 days and double shift on another 90 days, the extra depreciation allowance for triple shift working will be $135/270$, i.e., one-half of the normal allowance and that for double shift working $90/270$ i.e., one-third, of one-half of the normal allowance.

The extra shift allowance shall not be allowed in respect of any item of machinery or plant which has been specifically excepted by inscription of the

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letters "N.E.S.A." (meaning "No Extra Shift Allowance") against it in sub-item (ii) above and also in respect of the following items of machinery and plant to which the general rate of depreciation of 10 per cent applies—

- (1) Electrical Machinery—
Switchgear and instruments, transformers and other stationary plant and wiring and fittings of electric light and fan installations.
- (2) Locomotives, Rolling stock, Tramways and Railways used by concerns, excluding Railway concerns.
- (3) Mineral oil concerns—
Refineries—
 - (a) Boilers,
 - (b) Prime Movers,
 - (c) Process plant.
- (4) Mineral oil concerns—
Field operations—
 - (a) Boilers,
 - (b) Prime Movers,
 - (c) Process plant,
 - (d) Storage tanks (above ground),
 - (e) Pipelines (above ground),
 - (f) Jetties and Dry Docks.
- (5) Mines and quarries—
 - (a) Boilers and head-gears (excluding moving parts),
 - (b) Shafts and inclines,
 - (c) Tramways on the surface.

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- (6) Railway sidings.
- (7) Ropeway structures—
- (a) Trestle and Station steel work,
 - (b) Driving and tension gearing.
- (8) Salt Works—
- (a) Barges and Floating Plant,
 - (b) Piers, quays and jetties,
 - (c) Pipelines for conveying brine if constructed of masonry, concrete, cement, asphalt or similar materials.
- (9) Tramways Electric and tramways run by internal combustion engines—
- (a) Permanent way not exceeding 1,25,000 car kilometres per kilometre of track per annum.
 - (b) Cars—car trucks, car bodies, electrical equipment and motors,
 - (c) tram cars including engines and gears.

(10) Weighing machines.

IV. Ships—

(1) Ocean going ships	5	To be calculated on the actual cost.
(2) Vessels ordinarily operating on inland waters—		
(i) *Speed boats.	20	
(ii) Other vessels.	10	

*"Speed boat" means a motor boat driven by a high speed internal combustion engine capable of propelling the boat at a speed exceeding 24 kilometres per hour in still water and so designed that when running at a speed it will plane, i.e., its bow will rise from the water.

Part II
INCOME-TAX ACT

An Act to consolidate and amend the law relating to income-tax and super-tax.

Be it enacted by Parliament in the Twelfth Year of the Republic of India as follows :

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Income-tax Act, 1961.

(2) It extends to the whole of India.

(3) Save as otherwise provided in this Act, it shall come into force on the 1st day of April, 1962.

2. Definitions.—In this Act, unless the context otherwise requires,

(1) “agricultural income” means—

(a) any rent or revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in India or is subject to a local rate assessed and collected by officers of the Government as such :

(b) any income derived from such land by—

(i) agriculture ; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market ; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii) of this sub-clause ;

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any process mentioned in paragraphs (ii) and (iii) of sub-clause (b) is carried on :

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of rent-in-kind by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other-outbuilding ;

(1A) “amalgamation”, in relation to companies, means, the merger of one or more companies with another company or the merger of two or more companies

to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that—

(i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation ;

(ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation ;

(iii) shareholders holding not less than nine-tenths in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation,

otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first mentioned company ;

(2) "annual value", in relation to any property, means its annual value as determined under Section 23 ;

(3) "Appellate Assistant Commissioner" means a person appointed to be an Appellate Assistant Commissioner of Income-tax under sub-section (1) of Section 117 ;

(4) "Appellate Tribunal" means the Appellate Tribunal constituted under Section 252 ;

(5) "approved gratuity fund" means a gratuity fund which has been and continues to be approved by the Commissioner in accordance with the rules contained in Part C of the Fourth Schedule ;

(6) "approved superannuation fund" means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the Commissioner in accordance with the rules contained in Part B of the Fourth Schedule ;

(7) "assessee" means a person by whom any tax or any other sum of money is payable under this Act, and includes—

(a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person ;

(b) every person who is deemed to be an assessee under any provision of this Act ;

(c) every person who is deemed to be an assessee in default under any provision of this Act ;

(8) "assessment" includes re-assessment ;

(9) "assessment year" means the period of twelve months commencing on the 1st day of April every year ;

(10) "average rate of income-tax" means the rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income ;

(11) Omitted ;

(12) "Board" means the Central Board of Direct Taxes constituted under the Central Board of Revenue Act, 1963 (54 of 1963) ;

(13) "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture ;

(14) "capital assets" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include—

(i) any stock-in-trade, consumable stores or raw material held for the purposes of his business or profession ;

(ii) personal effects, that is to say, movable property (including wearing apparel, jewellery and furniture) held for personal use by the assessee or any member of his family dependent on him ;

(iii) agricultural land in India, not being land situate—

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; or

(b) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette ;

(iv) 6½ per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government ;

(15) "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity for profit ;

(16) "Commissioner" means a person appointed to be a Commissioner of Income-tax under sub-section (1) of Section 117, and includes a person appointed to be an Additional Commissioner of Income-tax under that sub-section ;

(17) "company" means—

(i) any Indian company, or

(ii) any association, whether incorporated or not, whether Indian or non-Indian, which is or was assessable or was assessed under the Indian Income-tax Act, 1922 (11 of 1922), as a company for the assessment year commencing on the 1st day of April, 1947, or which is declared by general or special order of the Board to be a company for the purpose of this Act ;

(18) "company in which the public are substantially interested"—a company is said to be a company in which the public are substantially interested—

(a) if it is a company owned by the Government or the Reserve Bank of India or in which not less than forty per cent of the shares are held (whether singly or taken together) by the Government or the Reserve Bank of India or a corporation owned by that bank ; or

(b) if it is a company which is not a private company as defined in the Companies Act, 1956, (1 of 1956), and the conditions specified either in item (A) or in item (B) are fulfilled, namely—

(A) shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) were, as on the last day of the relevant previous year, listed in a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and any rules made thereunder ;

(B) (i) shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in

profits) carrying not less than fifty per cent of the voting power have been allotted unconditionally, to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by

(a) the Government, or

(b) a corporation established by a Central, State or Provincial Act, or

(c) any company to which this clause applies or any subsidiary company of such company where such subsidiary company fulfils the conditions laid down in clause (b) of Section 108 (hereafter in this clause referred to as the subsidiary company), or

(d) the public (not being a director, or a company to which this clause does not apply);

(ii) the said shares were, during the relevant previous year, freely transferable by the holder to the other members of the public; and

(iii) the affairs of the company, or the shares carrying more than fifty per cent of its total voting power were at no time, during the relevant previous year, controlled or held by five or less persons.

Explanation 1.—In computing the number of five or less persons aforesaid,—

(i) the Government or any corporation established by a Central, State or Provincial Act or a company to which this clause applies or the subsidiary company of such company shall not be taken into account, and

(ii) persons who are relative of one another, and persons who are nominees of any other person together with that other person, shall be treated as a single person.

Explanation 2.—In its application to an Indian company whose business consists mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power, item (B) shall have effect as if for the words “not less than fifty per cent” and “more than fifty per cent”, the words “not less than forty per cent” and “more than sixty per cent” had, respectively, been substituted.

(19) “co-operative society” means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies;

(20) “director”, “manager” and “managing agent”, in relation to a company, have the meanings respectively assigned to them in the Companies Act, 1956 (1 of 1956);

(21) “Director of Inspection” means a person appointed to be a Director of Inspection under sub-section (1) of Section 117, and includes a person appointed to be an Additional Director of Inspection, a Deputy Director of Inspection or an Assistant Director of Inspection;

(22) “dividend” includes—

(a) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company;

(b) any distribution to its shareholders by a company of debentures, debenture-stock, or deposit certificates in any form, whether with or without interest, and any distribution to its preference shareholders of shares by way of bonus, to the extent to which the company possesses accumulated profits whether capitalised or not;

(c) any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the

accumulated profits of the company immediately before its liquidation, whether capitalised or not ;

(d) any distribution to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not ;

(e) any payment by a company, not being a company in which the public are substantially interested, of the sum (whether as representing a part of the assets of the company or otherwise) by way of advance or loan to a shareholder, being a person who has a substantial interest in the company or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits ;

but "dividend" does not include—

(i) a distribution made in accordance with sub-clause (c) or sub-clause (d) in respect of any share issued for full cash consideration, where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets ;

(ia) a distribution made in accordance with sub-clause (c) or sub-clause (d) in so far as such distribution is attributable to the capitalised profits of the company representing bonus shares allotted to its equity shareholders after the 31st March, 1964 ;

(ii) any advance of loan made to a shareholder by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company ;

(iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as dividend within the meaning of sub-clause (e) to the extent to which it is so set off.

Explanation 1.—The expression "accumulated profits", wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946, or after the 31st day of March, 1948, and before the 1st day of April, 1956.

Explanation 2.—The expression "accumulated profits" in sub-clauses (a), (b), (d) and (e), shall include all profits of the company upto the date of distribution or payment referred to in those sub-clauses, and in sub-clause (c) shall include all profits of the company up to the date of liquidation,

but shall not, where the liquidation is consequent on the compulsory acquisition of its undertaking by the Government or a corporation owned or controlled by the Government under any law for the time being in force, include any profits of the company prior to three successive previous years immediately preceding the previous year in which such acquisition took place.

(22A) "fair market value", in relation to a capital asset, means

(i) the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date ; and

(ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with the rules made under this Act ;

(23) "firm", "partner" and "partnership" have the meanings respectively assigned to them in the Indian Partnership Act, 1932 (9 of 1932) ; but the expression "partner" shall also include any person who, being a minor, has been admitted to the benefits of partnership ;

(24) "income" includes—

(i) profits and gains ;
 (ii) dividend ;
 (iii) the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) of Section 17 ;

(iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid ;

(v) any sum chargeable to income-tax under clauses (ii) and (iii) of Section 28 or Section 41 or Section 59 ;

(va) the value of any benefit or perquisite taxable under clause (iv) of Section 28 ;

(vi) any capital gains chargeable under Section 45 ;

(vii) the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with Section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule ;

(viii) any annuity due or commuted value of any annuity paid under the provisions of Section 280D ;

(25) "Income-tax Officer" means a person appointed to be an Income-tax Officer under Section 117 ;

(25A) "India" shall be deemed to include the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu, and Pondicherry,

(a) as respects any period for the purposes of Section 6 ; and

(b) as respects any period included in the previous year, for the purposes of making any assessment for the assessment year commencing on the 1st day of April, 1963, or for any subsequent year ;

(26) "Indian company" means a company formed and registered under the Companies Act, 1956 (1 of 1956), and includes—

(i) a company formed and registered under any law relating to companies formerly in force in any part of India [other than the State of Jammu and Kashmir and the Union territories specified in sub-clause (iii) of this clause] ;

(ii) in the case of the State of Jammu and Kashmir, a company formed and registered under any law for the time being in force in that State ;

Provided that the registered office of the company in all cases is in India ;

(iii) in the case of any of the union territories of Dadra and Nagar Haveli, Goa, Daman and Diu, and Pondicherry, a company formed and registered under any law for the time being in force in that Union territory ;

(27) "Inspecting Assistant Commissioner" means a person appointed to be an Inspecting Assistant Commissioner of Income-tax under sub-section (1) of Section 117 ;

(28) "Inspector of Income-tax" means a person appointed to be an Inspector of Income-tax under sub-section (2) of Section 117 ;

(29) "legal representative" has the meaning assigned to it in clause (11) of Section 2 of the Code of Civil Procedure, 1908 (5 of 1908) ;

(30) "non-resident" means a person who is not a "resident" and for the purposes of Sections 92, 93 and 168, includes a person who is not ordinarily resident within the meaning of sub-section (6) of Section 6 ;

(31) "person" includes—

(i) an individual, ,

- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,

(vi) a local authority, and

(vii) every artificial juridical person, not falling within any of the preceding sub-clauses ;

(32) "person who has a substantial interest in the company", means a person who is the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than twenty per cent of the voting power ;

(33) "prescribed" means prescribed by rules made under this Act ;

(34) "previous year" means the previous year as defined in Section 3 ;

(35) "principal officer", used with reference to a local authority or a company or any other public body or any association of persons or any body of individuals, means—

(a) the secretary, treasurer, manager or agent of the authority, company, association or body, or

(b) any person connected with the management or administration of the local authority, company, association or body upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof ;

(36) "profession" includes vocation ;

(37) "public servant" has the same meaning as in Section 21 of the Indian Penal Code, 1860 (45 of 1860) ;

(37A) "rate or rates in force" or "rates in force", in relation to an assessment year or financial year, mean —

(i) for the purposes of calculating income-tax under the first proviso to sub-section (5) of Section 132, or computing the income-tax chargeable under sub-section (4) of Section 172 or sub-section (2) of Section 174 or Section 175 or sub-section (2) of Section 176 or deducting income-tax under Section 192 from income chargeable under the head "salaries" or sub-section (9) of Section 80E from any payment referred to therein or computation of the "advance-tax" payable under Chapter XVII-C, the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year ;

(ii) for the purposes of deduction of tax under Sections 193, 194, 194A and 195, the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year ;

(38) "recognised provident fund" means a provident fund which has been and continues to be recognised by the Commissioner in accordance with the rules contained in Part A of the Fourth Schedule, and includes a provident fund established under a scheme framed under the Employees' Provident Funds Act, 1952 (19 of 1952) ;

(39) "registered firm" means a firm registered under the provisions of clause (a) of sub-section (1) of Section 185 or under that provision read with sub-section (7) of Section 184 ;

(40) "regular assessment" means the assessment made under Section 143 or Section 144 ;

(41) "relative" in relation to an individual, means the husband, wife, brother or sister or any ascendant or descendant of that individual ;

(42) "resident" means a person who is resident in India within the meaning of Section 6 ;

(42A) "short-term capital asset means a capital asset held by an assessee for not more than twenty-four months immediately preceding the date of its transfer,

but does not include a capital asset, being a certificate issued by an authorised dealer as defined in clause (ai) of Section 2 of the Foreign Exchange Regulation Act, 1947, as evidence of the remittance of foreign currency or other foreign exchange [as defined respectively in clause (c) and clause (d) of the said section] to India from a country outside India in accordance with the provisions of the said Act and any rules made thereunder, during the period commencing on the 26th day of October, 1965 and ending on the 28th day of February, 1966, or such later date as the Central Government may, by notification in the Official Gazette, specify in this behalf, notwithstanding that such capital asset has been held by the assessee for not more than twenty-four months immediately preceding the date of its transfer.

Explanation.—(i) In determining the period for which any capital asset is held by the assessee—

(a) in the case of a share held in a company in liquidation, there shall be excluded the period subsequent to the date on which the company goes into liquidation ;

(b) in the case of a capital asset which becomes the property of the assessee in the circumstances mentioned in sub-section (1) of Section 49, there shall be included the period for which the asset was held by the previous owner referred to in the said section ;

(c) in the case of a capital asset being a share or shares in an Indian company, which becomes the property of the assessee in consideration of a transfer referred to in clause (vii) of Section 47, there shall be included the period for which the share or shares in the amalgamating company were held by the assessee.

(ii) In respect of capital assets other than those mentioned in clause (i), the period for which any capital asset is held by the assessee shall be determined subject to any rules which the Board may make in this behalf.

(43) "tax" in relation to the assessment year commencing on the 1st day of April, 1965, and any subsequent assessment year means income-tax chargeable under the provisions of this Act, and in relation to any other assessment year income-tax and super-tax chargeable under the provisions of this Act prior to the aforesaid date ;

(43A) "tax credit certificate" means a tax credit certificate granted to any person in accordance with the provisions of Chapter XXII B and any scheme made thereunder :

(44) "Tax Recovery Officer" means—

(i) a Collector or an additional Collector ;

(ii) any such officer empowered to effect recovery of arrears of land revenue or other public demand under any law relating to land revenue or other public demand for the time being in force in the State as may be authorised by the State Government by general or special notification in the Official Gazette, to exercise the powers of a Tax Recovery Officer ;

(iii) any Gazetted Officer of the Central or a State Government who may be authorised by the Central Government by general or special notification in the Official Gazette, to exercise the powers of a Tax Recovery Officer ;

(45) "total income" means the total amount of income referred to in Section 5, computed in the manner laid down in this Act ;

(46) Omitted ;

(47) "transfer", in relation to a capital asset, includes the sale, exchange or relinquishment of the asset or the extinguishment of any rights therein or the compulsory acquisition thereof under any law ;

(48) "unregistered firm" means a firm which is not a registered firm.

3. "Previous year" defined.—(1) For the purpose of this Act, 'previous year' means—

(a) the financial year immediately preceding the assessment year ; or

(b) if the accounts of the assessee, have been made up to a date within the said financial year, then, at the option of the assessee, the twelve months ending on such date ; or

(c) in the case of any person or business or class of persons or business not falling within clause (a) or clause (b), such period as may be determined by the Board or by any authority authorised by the Board in this behalf ; or

(d) in the case of a business or profession newly set up in the said financial year, the period beginning with the date of the setting up of the business or profession and—

(i) ending with the said financial year ; or

if the accounts of the assessee have been made up to a date within the said financial year, then, at the option of the assessee, ending on that date, or

(iii) ending with the period, if any, determined under clause (c), as the case may be, or

(e) in the case of a business or profession newly set up in the twelve months immediately preceding the said financial year—

(i) if the accounts of the assessee have been made up to a date within the said financial year and the period from the date of the setting up of the business or profession to such date does not exceed twelve months, then at the option of the assessee such period, or

(ii) if any period has been determined under clause (c), then the period beginning with the date of the setting up of the business or profession and ending with that period,

as the case may be ; or

(f) where the assessee is a partner in a firm and the firm has been assessed as such, then, in respect of the assessee's share in the income of the firm, the period determined as the previous year for the assessment of the income of the firm ; or

(g) in respect of profits and gains from life insurance business, the year immediately preceding the assessment year for which annual accounts are required to be prepared under the Insurance Act, 1938 (4 of 1938), or under that Act read with Section 43 of the Life Insurance Corporation Act, 1956 (31 of 1956).

(2) Where an assessee has newly set up a business or profession in the said financial year and his accounts are made up to a date in the assessment year in respect of a period not exceeding twelve months from the date of such setting up, then, notwithstanding anything contained in sub-clause (iii) of clause (d) of sub-section (1), the assessee shall, in respect of that business or profession, at his option, be deemed to have no previous year for the said assessment

year under that clause and such option shall in relation to the immediately succeeding assessment year, have effect as an option exercised under sub-clause (i) of clause (e) of sub-section (1).

(3) Subject to the other provisions of this section an assessee may have different previous years in respect of separate sources of his income.

(4) Where in respect of a particular source of income or in respect of a business or profession newly set up the assessee has once exercised the option under clause (b) or sub-clause (ii) of clause (d) or sub-clause (i) of clause (e) of sub-section (1) or has once been assessed then, he shall not, in respect of that source, or, as the case may be, business or profession, be entitled to vary the meaning of the expression "previous year" as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit to impose.

CHAPTER II

BASIS OF CHARGE

4. Charge of Income-tax.—(1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions of, this Act in respect of the total income of the previous year or previous years, as the case may be, of every person :

Provided that where by virtue of any provision of this income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.

(2) In respect of income chargeable under sub-section (1) income-tax shall be deducted at the source or paid in advance where it is so deductible or payable under any provision of this act.

5. Scope of total income.—(1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which—

(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year ; or

(c) accrues to him outside India during such year ;

Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of Section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

(2) Subject to the provisions of this Act, the total income of any previous year of a person who is non-resident includes all income from whatever source derived which—

(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

Explanation 1.—Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance-sheet prepared in India.

Explanation 2.—For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India.

6. Residence in India.—For the purposes of this Act—

(1) an individual is said to be resident in India in any previous year, if he—

(a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or

(b) maintains or causes to be maintained for him a dwelling place in India for a period or periods amounting in all to one hundred and eighty-two days or more in that year and has been in India for thirty days or more in that year ; or

(c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

(2) A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs is situated wholly outside India.

(3) A company is said to be resident in India in any previous year, if—

(i) it is an Indian company ; or

(ii) during that year, the control and management of its affairs is situated wholly in India.

(4) Every other person is said to be resident in India in any previous year in every case, except where during that year the control and management of his affairs is situated wholly outside India.

(5) If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each his other sources of income.

(6) A person is said to be not “ordinarily resident” in India in any previous year if such person is—

(a) an individual who has not been resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and thirty days or more ; or

(b) a Hindu undivided family whose manager has not been resident

in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and thirty days or more.

7. Income deemed to be received.—The following incomes shall be deemed to be received in the previous year :—

(i) the annual accretion in the previous year to the balance at the credit of an employee participating in a recognised provident fund, to the extent provided in Rule 6 of Part A of the Fourth Schedule :

(ii) the transferred balance in a recognised provident fund to the extent provided in sub-rule (4) of Rule 11 of Part A of the Fourth Schedule.

8. Dividend income.—For the purposes of inclusion in the total income of an assessee.

(a) any dividend declared by a company or distributed or paid by it within the meaning of sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) or sub-clause (e) of clause (22) of Section 2 shall be deemed to be the income of the previous year in which it is so declared, distributed or paid, as the case may be :

(b) any interim dividend shall be deemed to be the income of the previous year in which the amount of such dividend is unconditionally made available by the company to the member who is entitled to it.

9. Income deemed to accrue or arise in India.—(1) The following income shall be deemed to accrue or arise in India—

(i) all incomes accruing or arising, whether directly or indirectly, through or from any business connection in India or through or from any asset or source of income in India, or through or from any money lent at interest and brought into India in cash or in kind or through the transfer of a capital asset situate in India :

Explanation.—For the purposes of this clause—

(a) in the case of a business of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India

(b) in the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export :

(ii) income which falls under the head “Salaries”, if it is earned in India :

(iii) income chargeable under the head “Salaries” payable by the Government to a citizen of India for service outside India :

(iv) a dividend paid by an Indian company outside India :

(2) Notwithstanding anything contained in sub-section (1), any pension payable outside India to a person residing permanently outside India shall not be deemed to accrue or arise in India, if the pension is payable to a person referred to in article 314 of the Constitution or to a person who, having been appointed before the 15th day of August, 1947, to be a Judge of the Federal Court or of a High Court, within the meaning of the Government of India Act, 1935, continues to serve on or after the commencement of the Constitution as a Judge in India.

CHAPTER III

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

10. Incomes not included in total income.—In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

(1) agricultural income ;

(2) any sum received by an individual as a member of a Hindu undivided family, where such sum has been paid out of the income of the family, or, in the case of any impartible estate, where such sum has been paid out of the income of the estate belonging to the family ;

(3) any receipts which are of a casual and non-recurring nature, unless they are—

(i) capital gains, chargeable under the provisions of section 45 ; or

(ii) receipts arising from business or the exercise of a profession or occupation, or

(iii) receipts by way of addition to the remuneration of an employee ;

(4) in the case of a non-resident, any income from interest on such securities as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any income from interest on, or from premium on the redemption of, any bonds issued by the Central Government under a loan agreement between the Central Government and the International Bank for Reconstruction and Development or under a loan agreement between the Central Government and the Development Loan Fund of the United States of America or any industrial undertaking or financial corporation in India under a loan agreement with the said Bank or Fund, as case may be, which is guaranteed by the Central Government ;

(4A) in the case of a non-resident, any income from interest on moneys standing to his credit in a Non-resident (External) Account in any bank in India in accordance with the Foreign Exchange Regulation Act, 1947, and any rules made thereunder ;

(5) subject to such conditions as the Central Government may prescribe, the value of any travel concession or assistance received by or due to any person, being a citizen of India, from his employer for himself, his wife and children, in connection with his proceeding on leave to his home-district in India ;

(6) in the case of an individual who is not a citizen of India,—

(i) subject to such conditions as the Central Government may prescribe, passage moneys or the value of any free or concessional passage received by or due to such individual from his employer for himself, his wife and children, in connection with his proceeding on home leave out of India ;

(ii) the remuneration received by him as ambassador, high commissioner, envoy, minister, *charge d'affaires* commissioner, counsellor or the secretary, adviser or attache of an embassy, high commission, legation or commission of a foreign State, for service in such capacity ;

(iii) the remuneration received by him as a *consul de carriere*, whether

called a consul-general, consul, vice-consul, consular agent, pro-consul or by any other name, of a foreign State for service in such capacity ;

(iv) the remuneration received by him as a trade commissioner or other official representative in India of the Government of a foreign State (not holding office as such in an honorary capacity), if the remuneration of the corresponding officials, if any, of the Government resident for similar purpose in the country concerned enjoys a similar exemption in that country ;

(v) the remuneration received by him as a member of the staff of the officials referred to in clause (ii), clause (ii.), or clause (iv), if the member—

(a) is a subject of the country represented ;

(b) is not engaged in any business or profession or employment in India otherwise than as a member of such staff ; and further, where the individual is a member of the staff of any official referred to in clause (iv), if the country represented has made corresponding provisions for similar exemptions in the case of members of the staff of the corresponding officials of the Government ;

(vi) the remuneration received by him as an employee of a foreign enterprise for services rendered by him during his stay in India, provided the following conditions are fulfilled—

(a) the foreign enterprise is not engaged in any trade or business in India ;

(b) his stay in India does not exceed in the aggregate a period of ninety days in such previous year ; and

(c) such remuneration is not liable to be deducted from the income of the employer chargeable under this Act ;

(vii) the remuneration due to or received by him chargeable under the head "Salaries" for services rendered as a technician in the employment of the Government or of a local authority or of any corporation set up under any special law or in business carried on in India, if he was not resident in any of the four financial years immediately preceding the financial year in which he arrived in India to the extent mentioned below—

(a) where his contract of service is approved by the Central Government before the commencement of his service or within one year of such commencement ;

(i) in the case of a technician who has special knowledge and experience in industrial or business management techniques, such remuneration due to or received by him during the period of six months commencing from the date of his arrival in India ;

(ii) in the case of any other technician, such remuneration due to or received by him during the thirty-six months commencing from the date of his arrival in India, and where any such person continues with the approval of the Central Government obtained 'before the 1st day of October of the relevant assessment year to remain in employment in India after the expiry of the thirty-six months aforesaid and the tax on his income chargeable under the head "Salaries" is paid by the employer to the Central Government [which tax in the case of an employer being a company may be paid notwithstanding anything contained in Section 200 of the Companies Act, 1956 (1 of 1956)], the tax so paid by the employer for a period not exceeding sixty months following the expiry of the thirty-six months aforesaid ;

(b) in any other case, not being the case of a technician who has special knowledge and experience in industrial or business management techniques, such remuneration due to or received by him for the period of three hundred and sixty-five days in all commencing from the date of his arrival in India.

Explanation.—"Technician" means a person having specialised knowledge and experience in—

(i) construction or manufacturing operations, or in mining or in the generation or distribution of electricity or any other form of power, or

(ii) industrial or business management techniques :

who is employed in India in a capacity in which such specialised knowledge and experience are actually utilised.

(viii) any income chargeable under the head "Salaries" received by or due to any such individual being a non-resident as remuneration for services rendered in connection with his employment on a foreign ship where his total stay in India does not exceed in the aggregate a period of ninety days in the previous year ;

(ix) any income chargeable under the head "Salaries" received by or due to him during the thirty-six months commencing from the date of his arrival in India for service rendered as professor or other teacher in a University or other educational institution, and where any such individual continues to remain in employment in India after the expiry of the thirty-six months aforesaid and the tax on his income chargeable under the head "Salaries" is paid by the University or other educational institution concerned to the Central Government, the tax so paid for a period not exceeding twenty-four months following the expiry of the thirty-six months aforesaid, provided in either case the following conditions are fulfilled namely—

(i) such individual was not resident in any of the four financial years immediately preceding the financial year in which he arrived in India ; and

(ii) his contract of service is approved by the Central Government—

(a) on or before the 1st day of October, 1964, in the case of a professor or other teacher whose service commenced before the 1st day of April, 1964 ;

(b) before the commencement of his service or within one year of such commencement, in any other case ;

(x) any sum due to or received by him, during the twenty-four months commencing from the date of his arrival in India for undertaking any research work in India, provided the following conditions are fulfilled, namely :—

(a) the research work is undertaken in connection with a research scheme approved in this behalf by the Central Government on or before the 1st day of October of the relevant assessment year ; and

(b) such sum is payable or paid directly or indirectly by the Government of a foreign State or any institution or association or other body established outside India ;

(7) any allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India ;

(8) in the case of an individual who is assigned to duties in India in connection with any co-operative technical assistance programmes and project

in accordance with an agreement entered into by the Central Government and the Government of a foreign State (the terms whereof provide for the exemption given by this clause)—

(a) the remuneration received by him directly or indirectly from the Government of that foreign State for such duties, and

(b) any other income of such individual which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such individual is required to pay any income or social security tax to the Government of that foreign State ;

(9) the income of any member of the family of any such individual as is referred to in clause (8) accompanying him to India, which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such member is required to pay any income or social security tax to the Government of that foreign State ;

(10) any death-cum-retirement gratuity received under the revised Pension Rules of the Central Government or under any similar scheme of a State Government, a local authority or a corporation established by a Central, State or Provincial Act or any payment of retiring gratuity received after the first day of June, 1953, under the New Pension Code applicable to the member of the Defence Services, or any other gratuity not exceeding one-half month's salary for each year of completed service, calculated on the basis of the average salary for the three years immediately preceding the year in which the gratuity is paid, subject to a maximum of twenty-four thousand rupees or fifteen month's salary so calculated, whichever is less ;

(10A) (i) any payment in commutation of pension received under the Civil Pensions (Commutation) Rules of the Central Government or under any similar scheme applicable to the members of the Defence Services or to the employees of a State Government, a local authority or a corporation established by a Central, State or Provincial Act ;

(ii) any payment in commutation of pension received under any scheme of any other employer, to the extent it does not exceed—

(a) in a case where the employee receives any gratuity, the commuted value of one-third of the pension which he is normally entitled to receive, and

(b) in any other case, the commuted value of one-half of such pension, such commuted value being determined having regard to the age of the recipient, the state of his health, the rate of interest and officially recognised tables of mortality ;

Provided that the maximum limit of payment specified in sub-clause (ii) (a) or sub-clause (ii) (b) shall not apply in respect of any such payment made before the 19th day of August, 1965 ;

(11) any payment from provident fund to which the Provident Funds Act, 1925 (19 of 1925) applies or from any other provident fund set up by the Central Government and notified by it in this behalf in the Official Gazette ;

(12) the accumulated balance due and becoming payable to an employee participating in a recognised provident fund, to the extent provided in Rule 8 of Part A of the Fourth Schedule ;

(13) any payment from an approved superannuation fund made—

(i) on the death of a beneficiary ; or

(ii) to an employee in lieu of or in commutation of an annuity on his retirement at or after a specified age or on his becoming incapacitated prior to such retirement ; or

(iii) by way of refund of contribution on the death of beneficiary ; or

(iv) by way of refund of contributions to an employee on his leaving the service in connection with which the fund is established otherwise than by retirement at or after a specified age or on his becoming incapacitated prior to such retirement, to the extent to which such payment does not exceed the contributions made prior to the commencement of this Act and any interest thereon ;

(13A) any special allowance specifically granted to an assessee by his employer to meet expenditure actually incurred on payment of rent (by whatever name called) in respect of residential accommodation occupied by the assessee, to such extent (not exceeding three hundred rupees per month) as may be prescribed having regard to the area or place in which such accommodation is situate and other relevant considerations ;

(14) any special allowance or benefit, not being in the nature of an entertainment allowance or other perquisite within the meaning of clause (2) of Section 17, specifically granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office or employment of profit, to the extent to which such expenses are actually incurred for that purpose ;

(15) (i) monthly payment on the 15 Year Annuity Certificates issued by or under the authority of the Central Government or such other annuity certificates issued by or under the authority of that Government may, by notification in the Official Gazette, specify in this behalf, to the extent to which the amounts of the certificates do not exceed in each case the maximum amount which is permitted to be invested therein ;

(ia) annual payment on National Defence Gold Bonds, 1980 ;

(ii) interest on Treasury Savings Deposit Certificates, Post Office Cash Certificates, Post Office National Savings Certificates, National Plan Certificates, Twelve Year National Plan Savings Certificates and such other certificates issued by the Central Government as that Government may, by notification in the Official Gazette, specify in this behalf, and interest on deposits in Post Office Savings Banks and bonus in respect of deposits under the Post Office Savings Bank (Cumulative Time Deposits) Rules, 1959, to the extent to which the amounts of such certificates or deposits do not exceed in each case the maximum amount which is permitted to be invested or deposited therein ;

(ia) interest on fixed deposits under any scheme framed by Central Government and notified by it in this behalf in the Official Gazette, to the extent to which the amounts of such deposits do not exceed, in each case, the maximum amount which is permitted to be deposited therein.

(iii) interest on securities held by the Issue Department of the Central Bank of Ceylon constituted under the Ceylon Monetary Law Act, 1949 ;

(iv) interest payable—

(a) by Government or a local authority on moneys borrowed by it from sources outside India ;

(b) by an industrial undertaking in India on moneys borrowed by it under a loan agreement entered into with any such financial institution in a

foreign country as may be approved in this behalf by the Central Government by general or special order ;

(c) by an industrial undertaking in India on any moneys borrowed or debt incurred by it in a foreign country in respect of the purchase outside India of raw materials or capital plant and machinery ;

to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan or debt and its payment ;

(16) scholarships, granted to meet the cost of education ;

(17) any daily allowance received by any person by reason of his membership of Parliament or any State Legislature or of any Committee thereof ;

(18) any payment made, whether in cash or in kind, by the Central Government or any State Government in pursuance of gallantry awards instituted or approved by the Central Government ;

(19) any amount received by the Ruler of an Indian State as privy purse under article 291 of the Constitution ;

(20) the income of a local authority which is chargeable under the head "Interest on securities", "Income from house property", "Capital gains" or "Income from other sources" or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service within its own jurisdictional area ;

(20A) any income of an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning development or improvement of cities, towns and villages, or for both ;

(21) any income of a scientific research association for the time being approved for the purpose of clause (ii) of sub-section (1) of Section 35 which is applied solely to the purpose of the association ;

(22) any income of a University or other educational institution, existing solely for educational purposes and not for purposes of profit ;

(22A) any income of a hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit.

(23) any income of an association or institution established in India having as its object the control, supervision, regulation or encouragement in India of the games of cricket, hockey, football, tennis or such other games or sports as the Central Government may specify in this behalf from time to time by notification in the Official Gazette ;

Provided that—

(i) the association or institution applies its income, or accumulates it for application, solely to the objects for which it is established ;

(ii) no part of the income of the association or institution is distributed in any manner to its members except as grants to any association or institution affiliated to it ; and

(iii) the association or institution is, for the time being, approved for

the purpose of this clause by the Central Government by general or special order ;

(23A) any income (other than income chargeable under the head "Interest on securities" or "Income from house property" or any income received for rendering any specific services or by way of interest or dividends derived from its investments) of an association established in India having as its objects the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, engineering or architecture or such other profession as the Central Government may specify in this behalf, from time to time, by notification in the Official Gazette ;

Provided that—

(i) the association or institution applies its income, or accumulates it for application, solely to the objects for which it is established ; and

(ii) the association or institution is for time being approved for the purpose of this clause by the Central Government by general or special order ;

(24) any income chargeable under the head "Interest on securities", "Income from house property" and "Income from other sources" of a registered trade union within the meaning of the Indian Trade Union Act, 1926 (16 of 1926), formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen ;

(25) (i) interest on securities which are held by, or are the property of any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies and any capital gains of the fund arising from the sale exchange or transfer of such securities ;

(ii) any income received by the trustees on behalf of a recognised provident fund ;

(iii) any income received by the trustees on behalf of an approved superannuation fund ;

(26) in the case of a member of a Scheduled Tribe as defined in clause (25) of article 366 of the Constitution, residing in any area specified in Part A or Part B of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution or in the State of Nagaland or in the Union Territories of Manipur and Tripura, who is not in the service of Government,

any income which accrues or arises to him,

(a) from any source in the area, State or Union Territories aforesaid, or

(b) by way of dividend or interest on securities ;

(26A) any income accruing or arising to any person (not being an individual who is in the service of Government) from any source in the district of Ladakh or outside India in any previous year relevant to any assessment year commencing before the 1st day of April, 1970, where such person is resident in the said district in that previous year :

Provided that this clause shall not apply in the case of any such person unless he was resident in that district in the previous year relevant to the assessment year commencing on the 1st day of April, 1963 ;

Explanation.—For the purposes of this clause, a person shall be deemed to be resident in the district of Ladakh if he fulfils the requirements of sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) of Section 6, as the case may be, subject to the modifications that—

(i) references in those sub-sections to India shall be construed as references to the said district ; and

(ii) in clause (i) of sub-section (3) reference to Indian Company shall be construed as reference to a company formed and registered under any law for the time being in force in the State of Jammu and Kashmir and having its registered office in that district in that year.

(27) any income derived from a business of livestock breeding, poultry or dairy farming.

(28) any amount adjusted or paid in respect of a tax credit certificate under the provisions of Chapter XXII B and any scheme made thereunder.

(29) in the case of an authority constituted under any law for the time being in force for the marketing of commodities, any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities.

11. Income from property held for charitable or religious purposes.—

(1) Subject to the provision of Sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

(a) income derived from property held under trust wholly for charitable or religious purpose, to the extent to which such income is applied to such purposes in India ; and, where any such income is accumulated for application to such purposes in India, to the extent to which the income so accumulated is not in excess of twenty-five per cent of the income from the property or rupees ten thousand, whichever, is higher ;

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India ; and where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of twenty-five per cent of the income from the property held under trust in part ;

(c) income from property held under trust—

(i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India :

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in respect of such income.

Explanation.—For the purposes of clauses (a) and (b), in computing twenty-five per cent of the income from any such property as is referred to in the said clauses for any previous year, the income from such property for the year immediately preceding the previous year may be adopted, if that income is higher than the income for the previous year.

(2) Where the person in receipt of the income have complied with the following conditions, the restriction specified in clause (a) or clause (b) of sub-section (1) as respects accumulation or setting apart shall not apply for the period during which the said conditions remain complied with—

(a) such persons have, by notice in writing given to the Income-tax Officer in the prescribed manner, specified the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart which shall in no case exceed ten years ;

(b) the money so accumulated or set apart is invested in any Government security as defined in clause (2) of Section 2 of the Public Debt Act, 1944 (18 of 1944) or in any other security which may be approved by the Central Government in this behalf.

(3) Any income referred to in sub-section (1) or sub-section (2) as is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto or is not utilised for the purpose for which it is so accumulated in the year immediately following the expiry of the period allowed in this behalf shall be deemed to be the income of such person of the previous year in which it is so applied, or ceases to be so accumulated or so set apart or, as the case may be, of the previous year immediately following the expiry of the period aforesaid.

(4) For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Income-tax Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment ; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes and accordingly chargeable to tax within the meaning of sub-section (3).

12. Income of trusts or institutions from voluntary contributions.—

(1) Any income of a trust for charitable or religious purposes or of a charitable or religious institution derived from voluntary contributions and applicable solely to charitable or religious purposes shall not be included in the total income of the trustees or the institution, as the case may be.

(2) Notwithstanding anything contained in sub-section (1), where any such contributions as are referred to in sub-section (1) are made to a trust or a charitable or religious institution by a trust or a charitable or religious institution to which the provisions of Section 11 apply, such contributions shall, in the hands of the trust or institution receiving the contributions, be deemed to be income derived from property for the purposes of that section and the provisions of that section shall apply accordingly.

13. Section 11 not to apply in certain cases.—Nothing contained in Section 11 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

(a) any part of the income from property held under a trust for private religious purposes which does not enure for the benefit of the public ;

(b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof,

(i) if the trust or institution is created or established for the benefit of any particular religious community ; or

(ii) if under the terms of the trust or the rules governing the institution,

any part of such income enures, directly or indirectly, or if any part of such income or any property of the trust or the institution is during the previous year used or applied, directly or indirectly, for the benefit of the author of the trust or the founder of the institution or any person who has made a substantial contribution to such trust or institution or any relative of such author, founder or person and where such author, founder or person is a Hindu undivided family, any part of such income enures, or any part of such income or any such property is during the previous year used or applied, directly or indirectly, for the benefit of any member of the Hindu undivided family or any relative of any member of the family ;

Provided that in a case where this section applies by reason only that under the terms of the trust or the rules governing the institution any part of such income enures directly or indirectly or that any part of the income or any property of the trust or institution is, during the previous year, used or applied directly or indirectly for the benefit of any relative of such author, founder, person or member and the amount of income so enuring or used or applied for the benefit of such relative, together with the value of the benefit derived by him from the user or application of such property, if any, during the previous year, does not exceed a sum calculated at the rate of twenty-five per cent of the income of the trust or institution of the previous year, the provisions of this section shall have effect only in respect of that part of the income of the trust or institution which does not exceed the amount so enuring or used or applied together with the value of the benefit aforesaid.

Explanation 1.—For the purpose of Sections 11 and 12 and this section, “trust” includes any other legal obligation and for the purpose of this section “relative” also includes a lineal descendant of a brother or sister.

Explanation 2.—A trust or institution created or established for the benefit of Schedule Castes, backward classes, Scheduled Tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of sub-clause (a) of clause (b) of this section.

CHAPTER IV

COMPUTATION OF TOTAL INCOME

Heads of Income

14. Heads of Income.—Save as otherwise provided by this Act, all income shall for the purposes of charge of income-tax and computation of total income be classified under the following heads of income—

A.—Salaries.

C.—Income from house property.

B.—Interest on securities.

D.—~~Profits and gains of business or profession.~~

E.—Capital gains.

F.—Income from other sources.

A.—Salaries

15. Salaries.—The following income shall be chargeable to income-tax under the head "Salaries"—

(a) any salary due from an employer or a former employer to an assessee in the previous year, whether paid or not ;

(b) any salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him ;

(c) any arrears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year.

Explanation.—For the removal of doubts, it is hereby declared that where any salary paid in advance is included in the total income of any person for any previous year it shall not be included again in the total income of the person when the salary becomes due.

16. Deductions from salaries.—The income chargeable under the head "Salaries" shall be computed after making the following deductions, namely—

(i) any amount not exceeding five hundred rupees, expended by the assessee on the purchase of books and other publications necessary for the purpose of duties ;

(ii) in respect of any allowance in the nature of an entertainment allowance specifically granted to the assessee by his employer—

(a) in the case of an assessee who is in receipt of a salary from the Government, a sum equal to one-fifth of his salary (exclusive of any allowance, benefit or other perquisite) or five thousand rupees, whichever is less ; and

(b) in the case of any other assessee who is in receipt of such entertainment allowance and has been continuously in receipt of such entertainment allowance regularly from his present employer from a date before the 1st day of April, 1955, the amount of such entertainment allowance regularly received by the assessee from his present employer in any previous year ending before the 1st day of April, 1955, or a sum equal to one-fifth of his salary (exclusive of any allowance, benefit or other perquisite) or seven thousand five hundred rupees whichever is the least ;

(iii) any amount paid by the assessee in respect of taxes on professions, trades, callings or employments levied under any State or Provincial Act ;

(iv) where the assessee is not in receipt of a conveyance allowance, whether as such or as part of his salary, and owns a conveyance which is used for the purposes of his employment, a sum representing the expenditure incurred by him in its maintenance and as representing its normal wear and tear, calculated in respect of each calendar month or part thereof for which the conveyance has been so used during the previous year, on the basis provided hereunder—

- (1) where the conveyance is a motor car and the amount of the salary due to the assessee in respect of the previous year—
 - (a) does not exceed Rs. 25,000 Rs. 200 ;
 - (b) exceeds Rs. 25,000 Rs. 250 ;
- (2) where the conveyance is a motor cycle, scooter or other moped Rs. 50 ;
- (3) where the conveyance is a bicycle Rs. 5 ;
- (4) where it is a conveyance other than a conveyance referred to in sub-clauses (1) to (3) such amount as the Income-tax Officer may deem fit ;

(v) any amount actually expended by the assessee, not being an amount expended on the purchase of books or other publications, or on entertainment or on the maintenance of a conveyance, which, by the conditions of his service he is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties.

17. "Salary" "perquisite" and "profits in lieu of salary" defined.—For the purposes of Sections 15 and 16 and of this section -

- (1) "Salary" includes—
 - (i) wages ;
 - (ii) any annuity or pension ;
 - (iii) any gratuity ;
 - (iv) any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages ;
 - (v) any advance of salary ;
 - (vi) the annual accretion to the balance at the credit of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under Rule 6 of Part A of the Fourth Schedule, and
 - (vii) the aggregate of all sums that are comprised in the transferred balance as referred to in sub-rule (2) of Rule 11 of Part A of the Fourth Schedule of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax under sub-rule (4) thereof ;

(2) "perquisite" includes—

- (i) the value of rent-free accommodation provided to the assessee by his employer ;
- (ii) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer ;
- (iii) the value of any benefit or amenity granted or provided free of cost or at concessional rate in any of the following cases—

(a) by a company to an employee who is a director thereof ;

(b) by a company to an employee being a person who has a substantial interest in the company ;

(c) by any employer (including a company) to an employee to whom the provisions of paragraphs (a) and (b) of this sub-clause do not apply

whose income under the head "Salaries", exclusive of the value of all benefits or amenities not provided for by way of monetary payment, exceeds eighteen thousand rupees ;

(iv) any sum paid by the employer in respect of any obligation which but for such payment, would have been payable by the assessee ; and

(v) any sum payable by the employer, whether directly or through a fund other than a recognised provident fund or an approved superannuation fund, to effect an assurance on the life of the assessee or to effect a contract for an annuity ;

(3) "profits in lieu of salary" includes—

(i) the amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto ;

(ii) any payment (other than any payment referred to in clause (10), clause (10A), clause (11), clause (12) or clause (13A) of Section 10], due to or received by an assessee from an employer or from a provident or other fund (not being an approved superannuation fund) to the extent to which it does not consist of contributions by the assessee or interest on such contributions.

B.—Interest on Securities

18. Interest on securities.—(1) The following amount due to an assessee in the previous year shall be chargeable to income-tax under the head "Interest on securities"—

(i) interest on any security of the Central or State Government not being interest payable under Section 280-D in respect of any annuity deposit made under Chapter XXIIA ;

(ii) interest on debentures or other securities for money issued by or on behalf of a local authority or a company or a corporation established by a Central, State or Provincial Act.

(2) Nothing contained in sub-section (1) shall be construed as precluding an assessee from being charged to income-tax in respect of any interest on securities received by him in a previous year if such interest had not been charged to income-tax for any earlier previous year.

19. Deduction from interest on securities.—Subject to the provisions of Section 21, the income chargeable under the head "Interest on securities" shall be computed after making the following deductions—

(i) any reasonable sum expended by the assessee for the purpose of realising such interest ;

(ii) any interest payable on money borrowed for the purpose of investment in the securities by the assessee.

20. Deduction from interest on securities in the case of a banking company.
 re- the case of a banking company—
 busi.

(a) the sum to be regarded as a sum reasonably expended for the purpose use (i) of Section 19 shall be an amount bearing to the aggre-

gate of its expenses as are admissible under the provisions of Sections 30, 31, 36 and 37 [other than clauses (iii), (vi) and (vii) of sub-section (1) of Section 36] the same proportion as the gross receipts from interest on securities (inclusive of tax deducted at source) chargeable to income-tax under Section 18 bear to the gross receipts of the company from all sources which are included in the profit and loss account of the company;

(ii) the amount to be regarded as interest payable on moneys borrowed for the purpose referred to in clause (i) of Section 19 shall be an amount which bears to the amount of interest payable on all moneys borrowed by the company the same proportion as the gross receipts from interest on securities (inclusive of tax deducted at source) chargeable to income-tax under Section 18 bear to the gross receipts from all sources which are included in the profit and loss account of the company.

(2) The expenses deducted under clauses (i) and (ii) of sub-section (1) shall not again form part of the deductions admissible under Sections 30 to 37 for the purpose of computing the income of the company under the head "Profits and gains of business or profession".

Explanation.—For the purposes of this section "moneys borrowed" includes moneys received by way of deposits.

21. Amounts not deductible from interest on securities.—Notwithstanding anything contained in Sections 19 and 20, any interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938) on which tax has not been paid or deducted under Chapter XVII-B, and in respect of which there is no person in India who may be treated as an agent under Section 163 shall not be deducted in computing the income chargeable under the head "Interest on securities".

C.—Income from house property

22. Income from house property.—The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property".

23. Annual value how determined.—(1) For the purposes of Section 22, the annual value of any property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year:

Provided that where the property is in the occupation of a tenant, the taxes levied by any local authority in respect of the property shall, to the extent such taxes are borne by the owner, be deducted in determining the annual value of the property.

Provided further that in the case of a building comprising one or more residential units the erection of which is begun and completed after the 1st day of April, 1961, the annual value as determined under this sub-section shall, for the period of three years from the date of completion of the building, be reduced to a sum equal to the aggregate of—

(c)

be the owner of that building or part thereof ;

(iv) "annual charge" means a charge to secure an annual liability, but does not include any tax in respect of property or income from property imposed by a local authority, or the Central or a State Government ;

(v) "capital charge" means a charge to secure the discharge of a liability of a capital nature ;

(vi) taxes levied by a local authority in respect of any property shall be deemed to include service taxes levied by the local authority in respect of the property.

D.—Profits and gains of business or profession

28. Profits and gains of business or profession.—The following income shall be chargeable to income-tax under the head "profits and gains of business or profession"—

(i) the profits and gains of any business or profession which was carried on by the assessee at any time during the previous year ;

(ii) any compensation or other payment due to or received by,—

(a) any person, by whatever name called, managing the whole or substantially the whole of the affairs of an Indian company, at or in connection with the termination of his management or the modification of the terms and conditions relating thereto ;

(b) any person, by whatever name called, managing the whole or substantially the whole of the affairs in India of any other company, at or in connection with the termination of his office or the modification of the terms and conditions relating thereto ;

(c) any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of the agency or the modification of the terms and conditions relating thereto ;

(iii) income derived by a trade, professional or similar association from specific services performed for its members ;

(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of a profession.

Explanation 1.—The profits and gains of the business shall include the profits and gains of managing agency.

Explanation 2.—Where speculative transactions carried on by an assessee are of such a nature as to constitute a business, the business (hereinafter referred to as "speculation business") shall be deemed to be distinct and separate from any other business.

29. Income from profits and gains of business or profession, how computed.—The income referred to in Section 28 shall be computed in accordance with the provisions contained in Sections 30 to 43A.

30. Rent, rates, taxes, repairs and insurance for buildings.—In respect of rent, rates, repairs and insurance for premises, used for the purposes of the business or profession, the following deductions shall be allowed—

(a) where the premises are occupied by the assessee—

(i) as a tenant, the rent paid for such premises, and further if he has undertaken to bear the cost of repairs to the premises the amount paid on account of such repairs ;

(i) otherwise than as a tenant, the amount paid by him on account of current repairs to the premises ;

(b) any sums paid on account of land revenue, local rates or municipal taxes ;

(c) the amount of any premium paid in respect of insurance against risk of damage or destruction of the premises.

31. Repairs and insurance of machinery, plant and furniture.—In respect of repairs and insurance of machinery, plant or furniture used for the purpose of the business or profession, the following deductions shall be allowed—

(i) the amount paid on account of current repairs thereto ;

(ii) the amount of any premium paid in respect of insurance against risk of damage or destruction thereof.

32. Depreciation.—(1) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession, the following deductions shall, subject to the provisions of Section 34, be allowed—

(i) in the case of ships other than ships ordinarily plying on inland waters, such percentage on the actual cost thereof to the assessee as may in any case or class of cases be prescribed ;

(i) in the case of buildings, machinery, plant or furniture, other than ships covered by clause (i), such percentage on the written down value thereof as may in any case or class of cases be prescribed :

Provided that where the actual cost of any machinery or plant does not exceed seven hundred and fifty rupees, the actual cost thereof shall be allowed as a deduction in respect of the previous year in which such machinery or plant is first put to use by the assessee for the purposes of his business or profession ;

(iii) in the case of any building, machinery, plant or furniture which is sold, discarded, demolished or destroyed in the previous year (other than the previous year in which it is first brought into use), the amount by which the money payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, fall short of the written down value thereof :

Provided that such deficiency is actually written off in the books of the assessee.

Explanation.—For the purpose of this clause—

(1) “moneys payable” in respect of any building, machinery, plant or furniture includes—

(a) any insurance, salvage or compensation moneys payable in respect thereof ;

(b) where the building, machinery, plant or furniture is sold, the price for which it is sold ;

so, however, that where the actual cost of a motor car, is, in accordance with the proviso to clause (1) of Section 43, taken to be twenty-five thousand rupees, the moneys payable in respect of such motor car shall be taken to be a

sum which bears to the amount for which the motor car is sold or, as the case may be, the amount of any insurance, salvage or compensation moneys payable in respect thereof (including the amount of scrap value, if any) the same proportion as the amount of twenty-five thousand rupees bears to the actual cost of the motor car to the assessee as it would have been computed before applying the said proviso ;

(2) "sold" includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force but does not include a transfer, in a scheme of amalgamation, of any asset by the amalgamating company to the amalgamated company where the amalgamated company is an Indian company ;

(iv) in the case of any building which has been newly erected after the 31st day of March, 1961, where the building is used solely for the purpose of residence of persons employed in the business and the income of each such person chargeable under the head "Salaries" is seven thousand five hundred rupees or less or where the building is used solely or mainly for the welfare of such persons as a hospital, creche, school, canteen, library, recreational centre, shelter, rest-room or lunch-room, a sum equal to twenty per cent of the actual cost of the building to the assessee in respect of the previous year of erection of the building but any such sum shall not be deductible in determining the written down value for the purposes of clause (ii) of sub-section (1) ;

(v) in the case of any new building, the erection of which is completed after the 31st day of March, 1967, where the building is owned by an Indian company and used by such company as a hotel and such hotel is for the time being approved in this behalf by the Central Government, a sum equal to twenty-five per cent of the actual cost of erection of the building to the assessee, in respect of the previous year in which the erection of the building is completed or, if such building is first brought into use as a hotel in the immediately succeeding previous year then in respect of that previous year ; but any such sum shall not be deductible in determining the written down value for the purposes of clause (ii).

(2) Where in the assessment of the assessee, (or if the assessee is a registered firm or an unregistered firm assessed as a registered firm, in the assessment of its partners) full effect cannot be given to any allowance under clause (i) or clause (ii) or clause (iv) or clause (v) of sub-section (1) in any previous year owing to there being no profits or gains chargeable for that previous year, or owing to the profits or gains chargeable being less than the allowance, then, subject to the provisions of sub-section (2) of Section 72 and sub-section (3) of Section 73, the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following previous year and deemed to be part of that allowance, or if there is no such allowance for that previous year, be deemed, to be the allowance for that previous year, and so on for the succeeding previous years.

33. Development rebate.—(1) (a) In respect of a new ship or new machinery or plant (other than office appliances or road transport vehicles) which is owned by the assessee and is wholly used for the purposes of the business carried on by him, there shall, in accordance with and subject to the provisions of this section and of Section 34, be allowed a deduction, in respect of the previous year in which the ship was acquired or the machinery or plant was installed or, if the ship, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous

year, a sum by way of development rebate as specified in clause (b).

(b) The sum referred to in clause (a) shall be—

(A) in the case of a ship, forty per cent of the actual cost, thereof to the assessee;

(B) in the case of machinery or plant,—

(i) where the machinery or plant is installed for the purpose of business of construction, manufacture or production of any one or more of the articles or things specified in the list in the First Schedule,—

(a) thirty-five per cent of the actual cost of the machinery or plant to the assessee, where it is installed before the 1st day of April, 1970, and

(b) twenty-five per cent of such cost where it is installed after the 31st day of March, 1970;

(ii) where the machinery or plant is installed after the 31st day of March, 1967, by an assessee being an Indian company in premises used by it as a hotel and such hotel is for the time being approved in this behalf by the Central Government—

(a) thirty-five per cent of the actual cost of the machinery or plant to the assessee, where it is installed before the 1st day of April, 1970, and

(b) twenty-five per cent of such cost, where it is installed after the 31st day of March, 1970;

(iii) where the machinery or plant is installed after the 31st day of March, 1967, being an asset representing expenditure of a capital nature on scientific research related to the business carried on by the assessee,—

(a) thirty-five per cent of the actual cost of the machinery or plant to the assessee, where it is installed before the 1st day of April, 1970, and

(b) twenty-five per cent of such cost where it is installed after the 31st day of March, 1970;

(iv) in any other case,—

(a) twenty per cent of the actual cost of the machinery or plant to the assessee, where it is installed before the 1st day of April, 1970, and

(b) fifteen per cent of such cost where it is installed after the 31st day of March, 1970.

(1A) (a) An assessee who, after the 31st day of March, 1964, acquires any ship which before the date of acquisition by him was used by any other person shall, subject to the provisions of Section 34, also be allowed as a deduction a sum by way of development rebate at such rate or rates as may be prescribed, provided that the following conditions are fulfilled, namely—

(i) such ship was not previous to the date of such acquisition owned at any time by any person resident in India;

(ii) such ship is wholly used for the purposes of the business carried on by the assessee; and

(iii) such other conditions as may be prescribed.

(b) An assessee who installs any machinery or plant (other than office appliances or road transport vehicles) which before installation by the assessee was used outside India by any other person shall, subject to the provisions of Section 34, also be allowed as a deduction a sum by way of development rebate at such rate or rates as may be prescribed, provided that the following conditions

are fulfilled, namely—

- (i) such machinery or plant was not used in India at any time previous to the date of such installation by the assessee ;
- (ii) it is imported in India by the assessee from any country outside India ;
- (iii) no deduction on account of depreciation or development rebate in respect of such machinery or plant has been allowed or is allowable under the provisions of the Indian Income-tax Act, 1922 (11 of 1922), or this Act in computing the total income of any person for any period to the date of the installation of the machinery or plant by the assessee ;
- (iv) such machinery or plant is wholly used for the purposes of the business carried on by the assessee ; and
- (v) such other conditions as may be prescribed.

(c) The development rebate under this sub-section shall be allowed as a deduction in respect of the previous year in which the ship was acquired or the machinery or plant was installed or, if the ship, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year.

(2) In the case of a ship acquired or machinery or plant installed after the 31st day of December, 1957, where the total income of the assessee assessable for the assessment year relevant to the previous year in which the ship was acquired or the machinery or plant installed or the immediately succeeding previous year, as the case may be, [the total income for this purpose being computed without making any allowance under sub-section (1) or sub-section (1A) of this section or sub-section (1) of Section 33A or any deduction under Chapter VIA or Section 280-01] is nil or is less than the full amount of the development rebate calculated at the rate applicable thereto under sub-section (1) or sub-section (1A) of this section or sub-section (1) of Section 33A as the case may be,

(i) the sum to be allowed by way of development rebate for that assessment year under sub-section (1) or sub-section (1A) of this section or sub-section (1) of Section 33A shall be only such amount as is sufficient to reduce the said total income to nil ; and

(ii) the amount of the development rebate, to the extent to which it has not been allowed as aforesaid, shall be carried forward to the following assessment year, and the development rebate to be allowed for the following assessment year shall be such amount as is sufficient to reduce the total income of the assessee assessable for that assessment year, computed in the manner aforesaid, to nil, and the balance of the development rebate, if any, still outstanding shall be carried forward to the following assessment year and so on, so however that no portion of the development rebate shall be carried for more than eight assessment years immediately succeeding the assessment year relevant to the previous year in which the ship was acquired or the machinery or plant installed or the immediately succeeding previous year, as the case may be.

Explanation.—Where for any assessment year development rebate is to be allowed in accordance with the provisions of sub-section (2) in respect of ships acquired or machinery or plant installed in more than one previous year, and the total income of the assessee assessable for that assessment year [the total income for this purpose being computed without making any allowance under sub-section (1) or sub-section (1A) of this section or sub-section (1) of Section 33A

or any deduction under Chapter VIA or Section 280-0] is less than the aggregate of the amounts due to be allowed in respect of the assets aforesaid for that assessment year, the following procedure shall be followed, namely—

(i) the allowance under clause (ii) of sub-section (2) shall be made before any allowance under clause (i) of that sub-section is made; and

(ii) where an allowance has to be made under clause (ii) of sub-section (2) in respect of amounts carried forward from more than one assessment year, the amount carried forward from an earlier assessment year shall be allowed before any amount carried from a later assessment year.

(3) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers to the amalgamated company any ship, machinery or plant in respect of which development rebate has been allowed to the amalgamating company under sub-section (1) or sub-section (1A),—

(a) the amalgamated company shall continue to fulfil the conditions mentioned in sub-section (3) of Section 34 in respect of the reserve created by the amalgamating company and in respect of the period within which such ship, machinery or plant shall not be sold or otherwise transferred and in default of any of these conditions, the provisions of sub-section (5) of Section 155 shall apply to the amalgamated company as they would have applied to the amalgamating company had it committed the default; and

(b) the balance of development rebate, if any, still outstanding to the amalgamating company in respect of such ship, machinery or plant shall be allowed to the amalgamated company in accordance with the provisions of sub-section (2), so however, that the total period for which the balance of development rebate shall be carried forward in the assessments of the amalgamating company and the amalgamated company shall not exceed the period of eight years specified in sub-section (2) and the amalgamated company shall be treated as the assessee in respect of such ship, machinery or plant for the purposes of this section and Section 34.

(4) Where a firm is succeeded to by a company in the business carried on by it as a result of which the firm sells or otherwise transfers to the company any ship, machinery or plant, the provisions of clauses (a) and (b) of sub-section (3) shall, so far as may be, apply to the firm and the company.

Explanation.—The provisions of this clause shall apply only where—

(i) all the property of the firm relating to the business immediately before the succession becomes the property of the company;

(ii) all the liabilities of the firm relating to the business immediately before the succession become the liabilities of the company; and

(iii) all the shareholders of the company were partners of the firm immediately before the succession.

(5) The Central Government, if it considers necessary or expedient so to do, may, by notification in the Official Gazette, direct that the deduction allowable under this section shall not be allowed in respect of a ship acquired or machinery or plant installed after such date, not being earlier than three years from the date of such notification, as may be specified therein.

(6) Notwithstanding anything contained in the foregoing provisions of this section, no deduction by way of development rebate shall be allowed in respect of any machinery or plant installed after the 31st day of March, 1965, in any office premises or any residential accommodation, including any accom-

modation in the nature of a guest-house :

Provided that the provisions of this sub-section shall not apply in the case of an assessee being an Indian company, in respect of any machinery or plant installed by it in premises used by it as a hotel, where the hotel, is for the time being approved in this behalf by the Central Government.

33A. Development allowance.—(1) In respect of the bushes on any land in India owned by an assessee who carries on business of growing and manufacturing tea in India, a sum by way of development allowance equivalent to—

(i) where tea bushes have been planted on any land not planted at any time with tea bushes or any land which had been previously abandoned, fifty per cent of the actual cost of planting,

(ii) where tea bushes are planted in replacement of tea bushes that have died or have become permanently useless on any land already planted, thirty per cent of the actual cost of planting,

shall, subject to provisions of this section, be allowed as a deduction in the manner specified hereunder, namely—

(a) the amount of the development allowance shall, in the first instance, be computed with reference to that portion of the actual cost of planting which is incurred during the previous year in which the land is prepared for planting or replanting, as the case may be, and in the previous year next following, and the amount so computed shall be allowed as a deduction in respect of such previous year next following ; and

(b) thereafter, the development allowance shall again be computed with reference to the actual cost of planting, and if the sum so computed exceeds the amount allowed as a deduction under clause (a), the amount of the excess shall be allowed as a deduction in respect of the third succeeding previous year next following the previous year in which the land has been prepared for planting or replanting, as the case may be :

Provided that no deduction under clause (i) shall be allowed unless the planting has commenced after the 31st day of March, 1965, and no deduction shall be allowed under clause (ii) unless the planting has commenced after the 31st day of March, 1965, and been completed before the 1st day of April, 1970.

(2) Where the total income of the assessee assessable for the assessment year relevant to the previous year in respect of which the deduction is required to be allowed under sub-section (1) [the total income for this purpose being computed after making the allowance under sub-section (1) or sub-section (1A) or clause (ii) of sub-section (2) of Section 33 but without making any allowance under sub-section (1) of this section or any deduction under Chapter VIA or Section 280-0] is nil or is less than the full amount of the development allowance calculated at the rates and in the manner specified in sub-section (1)—

(i) the sum to be allowed by way of development allowance for that assessment year under sub-section (1) shall be only such amount as is sufficient to reduce the said total income to nil ; and

(ii) the amount of the development allowance, to the extent to which it has not been allowed as aforesaid, shall be carried forward to the following assessment year, and the development allowance to be allowed for the following assessment year shall be such amount as is sufficient to reduce the total income of the assessee assessable for that assessment year, computed in the manner aforesaid, to nil, and the balance of the development allowance, if any, still

outstanding shall be carried forward to the following assessment year and so on, so however, that no portion of the development allowance shall be carried forward for more than eight assessment years immediately succeeding the assessment year in which deduction was first allowable.

Explanation.—Where for any assessment year development allowance is to be allowed in accordance with the provisions of sub-section (2) in respect of more than one previous year, and the total income of the assessee assessable for that assessment year [the total income for this purpose being computed after making the allowance under sub-section (1) or sub-section (1A) or clause (ii) of sub-section (2) of Section 33 but without making any allowance under sub-section (1) of this section or any deduction under Chapter VIA or Section 280-0] is less than the amount of the development allowance due to be made in respect of that assessment year, the following procedure shall be followed, namely—

(i) the allowance under clause (ii) of sub-section (2) of this section shall be made before any allowance under clause (i) of that sub-section is made and

(ii) where an allowance has to be made under clause (ii) of sub-section (2) of this section in respect of amounts carried forward from more than one assessment year, the amount carried forward from an earlier assessment year shall be allowed before any amount carried forward from a later assessment year.

(3) The deduction under sub-section (1) shall be allowed only if the following conditions are fulfilled, namely—

(i) the particulars prescribed in this behalf have been furnished by the assessee ;

(ii) an amount equal to seventy-five per cent of the development allowance to be actually allowed is debited to the profit and loss account of the relevant previous year and credited to a reserve account to be utilised by the assessee during a period of eight years next following for the purposes of the business of the undertaking, other than —

(a) for distribution by way of dividends or profits or

(b) for remittance outside India as profits or for the creation of any asset outside India ; and

(iii) such other conditions as may be prescribed.

(4) If any such land is sold or otherwise transferred by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which the deduction under sub-section (1) was allowed, any allowance under this section shall be deemed to have been wrongly made for the purposes of this Act, and the provisions of sub-section (5A) of Section 155 shall apply accordingly :

Provided that this sub-section shall not apply—

(i) where the land is sold or otherwise transferred by the assessee to the Government, a local authority, a corporation established by a Central, State or Provincial Act or a Government company as defined in Section 617 of the Companies Act, 1956 ; or

(ii) where the sale or transfer, of the land is made in connection with the amalgamation or succession referred to in sub-section (5) or sub-section (6).

(5) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers to the amalgamated company any land in respect of which development allowance has been allowed to the amalgamating company under sub-section (1),—

(a) the amalgamated company shall continue to fulfil the conditions mentioned in sub-section (3) in respect of the reserve created by the amalgamating company and in respect of the period within which such land shall not be sold or otherwise transferred and in default of any of these conditions, the provisions of sub-section (5A) of Section 155 shall apply to the amalgamated company as they would have applied to the amalgamating company had it committed the default; and

(b) the balance of development allowance, if any, still outstanding to the amalgamating company in respect of such land shall be allowed to the amalgamated company in accordance with the provisions of sub-section (2), so however, that the total period for which the balance of development allowance shall be carried forward in the assessments of the amalgamating company and the amalgamated company shall not exceed the period of eight years specified in sub-section (2) and the amalgamated company shall be treated as the assessee in respect of such land for the purpose of this section.

(6) where a firm is succeeded to by a company in the business carried on by it as a result of which the firm sells or otherwise transfers to the company any land on which development allowance has been allowed, the provisions of clauses (a) and (b) of sub-section (5) shall, so far as may be, apply to the firm and the company.

Explanation.—The provisions of this sub-section shall apply if the conditions laid down in the explanation to sub-section (4) of Section 33 are fulfilled.

(7) For the purposes of this section, "actual cost of planting" means the aggregate of—

- (i) the cost of preparing the land;
- (ii) the cost of seeds, cutting and nurseries;
- (iii) the cost of planting; and
- (iv) the cost of up-keep thereof, for the previous year in which the land has been prepared and the three successive previous years next following such previous year,

reduced by that portion of the cost, if any, as has been met directly by any other person or authority:

Provided that where such cost exceeds twelve thousand five hundred rupees per hectare in respect of land situated in a hilly area or exceeds ten thousand rupees per hectare in any other area, then the excess shall be ignored.

(8) The Board may, having regard to the elevation and topography, by general or special order, declare any areas to be hilly areas for the purposes of this section and such order shall not be questioned before any court of law or any authority.

33B. Rehabilitation allowance.—Where the business of any industrial undertaking carried on in India is discontinued in any previous year by reason of extensive damage to, or destruction of, any building, machinery, plant or furniture owned by the assessee and used for the purposes of such business as a direct result of—

- (i) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature; or

- (ii) riot or civil disturbance ; or
- (iii) accidental fire or explosion ; or
- (iv) action by an enemy or action taken in combating an enemy (whether with or without a declaration of war),

and, thereafter, at any time before the expiry of three years from the end of such previous year, the business is re-established, reconstructed or revived by the assessee, he shall, in respect of the previous year in which the business is so re-established, reconstructed or revived, be allowed a deduction of a sum by way of rehabilitation allowance equivalent to sixty per cent of the amount of the deduction allowable to him under clause (iii) of sub-section (1) of Section 32 in respect of the building, machinery, plant or furniture so damaged or destroyed.

Explanation.—In this section, “industrial undertaking” means any undertaking which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining.

34. Conditions for depreciation allowance and development rebate.—

(1) The deductions referred to in sub-section (1) of Section 32 shall be allowed only if the prescribed particulars have been furnished and the deduction referred to in Section 33 shall be allowed only if the particulars prescribed for the purpose of clause (i) and clause (ii) of sub-section (1) of Section 32 have been furnished by the assessee in respect of the ship or machinery or plant.

(2) For the purposes of Section 32—

(i) the aggregate of all deductions in respect of depreciation made under sub-section (1) of Section 32 or under the Indian Income-tax Act, 1922 (11 of 1922), or under any Act repealed by that Act or under the Indian Income-tax Act, 1886 (2 of 1886), shall, in no case, exceed the actual cost to the assessee of the buildings, machinery, plant or furniture, as the case may be.

Explanation.—Where a capital asset is transferred—

(i) by a holding company to its subsidiary company or by a subsidiary company to its holding company, or

(ii) by a company to another company in a scheme of amalgamation, and the conditions specified in clause (iv), or clause (v), or, as the case may be, clause (vi) of Section 47 are satisfied, then, in determining the aggregate of all deductions in respect of depreciation under this clause, account shall also be taken of the deductions in respect of depreciation allowed in the case of the company from which the asset has been transferred ;

(ii) nothing in clause (i) or clause (ii) or clause (iv) of sub-section (1) of Section 32 shall be deemed to authorise the allowance for any previous year of any sum in respect of any building, machinery, plant or furniture sold, discarded, demolished or destroyed in that year.

(3) (a) The deduction referred to in Section 33 shall not be allowed unless an amount equal to seventy-five per cent of the development rebate to be actually allowed is debited to the profit and loss account of the relevant previous year and credited to a reserve account to be utilised by the assessee during a period of eight years next following for the purposes of the business or the undertaking, other than—

(i) for distribution by way of dividends or profits ; or

- (ii) for remittance outside India as profits or for the creation of any asset outside India :

Provided that this clause shall not apply where the assessee is a company being a licensee within the meaning of the Electricity (Supply) Act, 1948 (54 of 1948), or where the ship has been acquired or the machinery or plant has been installed before the 1st day of January, 1958 :

Provided further that where a ship has been acquired after the 28th day of February, 1966, this clause shall have effect in respect of such ship as if for the words "seventy-five", the word "fifty" had been substituted.

(b) If any ship, machinery or plant is sold or otherwise transferred by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired, or installed, any allowance made under Section 33 or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), in respect of that ship, machinery or plant shall be deemed to have been wrongly made for the purpose of this Act, and the provisions of sub-section (5) of Section 155 shall apply accordingly :

Provided that this clause shall not apply—

(i) where the ship has been acquired or the machinery or plant has been installed before the first day of January, 1958 ; or

(ii) where the ship, machinery or plant is sold or otherwise transferred by the assessee to the Government, local authority, a corporation established by a Central, State or Provincial Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956) ; or

(iii) where the sale or transfer of the ship, machinery or plant is made in connection with the amalgamation or succession referred to in sub-section (3).

Explanation.—For the removal of doubts, it is hereby declared that the deduction referred to in Section 33 shall not be denied by reason only that the amount debited to the profit and loss account of the relevant previous year and credited to the reserve account aforesaid exceeds the amount of the profit of such previous year (as arrived at without making the debit aforesaid) in accordance with the profit and loss account.

35. Expenditure on scientific research—(1) In respect of expenditure on scientific research, the following deductions shall be allowed—

(i) any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business ;

(ii) any sum paid to a scientific research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific research :

Provided that such association, university, college or institution is for the time being approved for the purposes of this clause by the prescribed authority ;

(iii) any sum paid to a university, college or other institution to be used for research in social science or statistical research related to the class of business carried on, being a university, college or institution which is for the time being approved for the purposes of this clause by the prescribed authority ;

(iv) in respect of any expenditure of a capital nature on scientific research related to the business carried on by the assessee, such deduction as may be admissible under the provision of sub-section (2).

(2) For the purposes of clauses (iv) of sub-section (1),—

(i) in a case where such capital expenditure is incurred before the 1st day of April, 1967, one-fifth of the capital expenditure incurred in any previous year shall be deducted for that previous year: and the balance of the expenditure shall be deducted in equal instalments for each of the four immediately succeeding previous year;

(ia) in a case where such capital expenditure is incurred after the 31st day of March, 1967, the whole of such capital expenditure incurred in any previous year shall be deducted for that previous year;

Explanation.—Where any capital expenditure has been incurred before the commencement of the business, the aggregate of the expenditure so incurred within the three years immediately preceding the commencement of the business shall be deemed to have been incurred in the previous year in which the business is commenced;

(ii) Notwithstanding anything contained in clause (i), where an asset representing expenditure of a capital nature incurred before the 1st April, 1967 ceases to be used in a previous year for scientific research related to the business and the value of the asset at the time of the cessation, together with the aggregate of deduction already allowed under clause (i) falls short of the said expenditure, then—

(a) there shall be allowed a deduction for that previous year of an amount equal to such deficiency, and

(b) no deduction shall be allowed under that clause for that previous year or for any subsequent previous year;

(iii) if the asset mentioned in clause (ii) is sold, without having been used for other purposes in the year of cessation, the sale price shall be taken to be the value of the asset at the time of the cessation; and if the asset is sold, without having been used for other purposes, in a previous year subsequent to the year of cessation, and the sale price falls short of the value of the asset taken into account at the time of cessation, an amount equal to the deficiency shall be allowed as a deduction for the previous year in which the sale took place;

(iv) where a deduction is allowed for any previous year under this section in respect of expenditure represented wholly or partly by an asset, no deduction shall be allowed under clauses (i), (ii) and (iii) of sub-section (1) of Section 32 for the same previous year in respect of that asset;

(v) where the asset mentioned in clause (ii) is used in the business after it ceases to be used for scientific research related to that business, depreciation shall be admissible under clauses (i), (ii) and (iii) of sub-section (1) of Section 32.

(3) If any question arises under this section as to whether, and if so, to what extent, any activity constitutes or constituted, or any asset is or was being used for scientific research, the Board shall refer the question to the prescribed authority, whose decision shall be final.

(4) The provisions of sub-section (2) of Section 32 shall apply in relation to deductions allowable under clause (iv) of sub-section (1) as they apply in relation to deductions allowable in respect of depreciation.

(5) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers to the amalgamated company (being an Indian company) any asset representing expenditure of a capital nature on scientific research,—

(i) the amalgamating company shall not be allowed the deduction

under clause (ii) or clause (iii) of sub-section (2), and

(ii) the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not so sold or otherwise transferred the asset.

35A. Expenditure on acquisition of patent rights or copyrights.—(1) In respect of any expenditure of a capital nature incurred after the 28th day of February, 1966, on the acquisition of patent rights or copyrights (hereafter, in this section, referred to as rights) used for the purposes of the business, there shall, subject to and in accordance with the provisions of this section, be allowed for each of the relevant previous years, a deduction equal to the appropriate fraction of the amount of such expenditure.

Explanation.—For the purposes of this section,—

(i) “relevant previous years” means the fourteen previous years beginning with the previous year in which such expenditure is incurred or, where such expenditure is incurred before the commencement of the business, the fourteen previous years beginning with the previous year in which the business commenced :

Provided that where the rights commenced, that is to say, became effective, in any year prior to the previous year in which expenditure on the acquisition thereof was incurred by the assessee this clause shall have effect with the substitution for the reference to fourteen years of a reference to fourteen years less the number of complete years which, when the rights are acquired by the assessee, have elapsed since the commencement thereof, and if fourteen years have elapsed as aforesaid, of a reference to one year ;

(ii) “appropriate fraction” means the fraction the numerator of which is one and the denominator of which is the number of the relevant previous year.

(2) Where the rights come to an end without being subsequently revived or where the whole or any part of the rights is sold and the proceeds of the sale (so far as they consist of capital sums) are not less than the cost of acquisition thereof remaining unallowed, no deduction under sub-section (1) shall be allowed in respect of the previous year in which the rights come to an end or, as the case may be, the whole or any part of the rights is sold or in respect of any subsequent previous year.

(3) Where the rights either come to an end without being subsequently revived or are sold in their entirety and the proceeds of the sale (so far as they consist of capital sums) are less than the cost of acquisition thereof remaining unallowed, a deduction equal to such cost remaining unallowed or, as the case may be, such cost remaining unallowed as reduced by the proceeds of the sale, shall be allowed in respect of the previous year in which the rights come to an end, or, as the case may be, are sold.

(4) Where the whole or any part of the rights is sold and the proceeds of the sale (so far as they consist of capital sums) exceed the amount of the cost of acquisition thereof remaining unallowed, so much of the excess as does not exceed difference between the cost of acquisition of the rights and the amount of such cost remaining unallowed shall be chargeable to income-tax as income of the business of the previous year in which the whole or any part of the rights is sold.

Explanation.—Where the whole or any part of the rights is sold in a previous year in which the business is no longer in existence, the provisions

of this sub-section shall apply as if the business is in existence in that previous year.

(5) Where a part of the rights is sold and sub-section (4) does not apply, the amount of the deduction to be allowed under sub-section (1) shall be arrived at by—

(a) subtracting the proceeds of the sale (so far as they consist of capital sums) from the amount of the cost of acquisition of the rights remaining unallowed; and

(b) dividing the remainder by the number of relevant previous years which have not expired at the beginning of the previous year during which the rights are sold.

(6) Where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers the rights to the amalgamated company (being an Indian company),—

(i) the provisions of sub-sections (3) and (4) shall not apply in the case of the amalgamating company, and

(ii) the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not so sold or otherwise transferred the rights.

35B. Export markets development allowance.—(1) (a) Where an assessee, being a domestic company or a person (other than a company) who is resident in India, has incurred after the 29th day of February, 1968, whether directly or in association with any other person, any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) referred to in clause (b), he shall, subject to the provisions of this section, be allowed a deduction of a sum equal to one and one-third times the amount of such expenditure incurred during the previous year.

(b) The expenditure referred to in clause (a) is that incurred wholly and exclusively on—

(i) advertisement or publicity outside India in respect of the goods, services or facilities which the assessee deals in or provides in the course of his business;

(ii) obtaining information regarding markets outside India for such goods, services or facilities;

(iii) distribution, supply or provision outside India of such goods services or facilities, not being expenditure incurred in India in connection therewith or expenditure (whether incurred) on the carriage of such goods to their destination outside India or on the insurance of such goods while in transit;

(iv) maintenance outside India of a branch, office or agency for the promotion of the sale outside India of such goods, services or facilities;

(v) preparation and submission of tenders for the supply or provision outside India of such goods, services or facilities, and activities incidental thereto;

(vi) furnishing to a person outside India samples or technical information for the promotion of the sale of such goods, services or facilities;

(vii) travelling outside India for the promotion of the sale outside India of such goods, services or facilities, including travelling outward from, and return to, India;

(viii) performance of services outside India in connection with, or incidental to, the execution of any contract for the supply outside India of such goods, services or facilities ;

(ix) such other activities for the promotion of the sale outside India of such goods, services or facilities as may be prescribed.

Explanation.—In this section, “domestic company” shall have the meaning assigned to it in clause (2) of Section 80B.

(2) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure referred to in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year.

35C. Agricultural development allowance.—(1) (a) Where any company is engaged in the manufacture or processing of any article or thing which is made from, or uses in such manufacture or processing as raw material, any product of agriculture, animal husbandry, or dairy or poultry farming, and has incurred, after the 29th day of February, 1968 whether directly or through an association or body which has been approved for the purpose of this section by the prescribed authority, any expenditure in the provision of any goods, services, or facilities specified in clause (b) to a person [not being a person referred to in clause (b) sub-section (2) of Section 40A] who is a cultivator, grower or producer of such product in India, the company shall, subject to the provisions of this section, be allowed a deduction of a sum equal to one and one fifth times the amount of such expenditure incurred during the previous year.

(b) The goods, services or facilities referred to in clause (a) are the following :—

(i) fertilisers, seeds, pesticides, concentrates for cattle and poultry feed, tools or implements, for use by such cultivator, grower or producer ;

(ii) dissemination of information on, or demonstration of modern techniques or methods of agriculture, animal husbandry, or dairy or poultry farming, or advice on such techniques or methods ;

(iii) such other goods, services or facilities as may be prescribed.

Explanation.—In computing the expenditure with reference to which deduction under this section is to be allowed, the amount, if any received by the company in consideration of, or as compensation for, such goods, services or facilities shall be deducted.

(2) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure of the nature specified in sub-section (1) deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year.

36. Other deductions.—(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in Section 28—

(i) the amount of any premium paid in respect of insurance against risk of damage or destruction of stocks or stores used for the purposes of business or profession ;

(ii) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or

dividend if it had not been paid as bonus or commission :

Provided that the amount of the bonus or commission is reasonable with reference to—

- (a) the pay of the employee and the conditions of his service ;
- (b) the profits of the business or profession for the previous year in question ; and
- (c) the general practice in a similar business or profession ;
- (iii) the amount of the interest paid in respect of capital borrowed for the purpose of the business or profession :

Explanation.—Recurring subscriptions paid periodically by shareholders or subscribers in Mutual Benefit Societies which fulfil such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause.

(iv) any sum paid by the assessee as an employer by way of contribution towards a recognised provident fund or an approved superannuation fund, subject to such limits as may be prescribed for the purpose of recognising the provident fund or approving the superannuation fund, as the case may be, and subject to such conditions as the Board may think fit to specify in case where the contributions are not in the nature of annual contributions of fixed amounts or annual contributions fixed on some definite basis by reference to the income chargeable under the head "Salaries" or to the contributions or to the number of members of the fund.

(v) any sum paid by the assessee as an employer by way of contribution towards an approved gratuity fund created by him for the exclusive benefit of his employees under an irrevocable trust ;

(vi) in respect of animals which have been used for the purposes of the business or profession otherwise than as stock-in-trade and have died or become permanently useless for such purposes, the difference between the actual cost to the assessee of the animals and the amounts, if any, realised in respect of the carcasses of animals ;

(vii) subject to the provisions of sub-section (2), the amount of any debt of part thereof, which is established to have become a bad debt in the previous year ;

(viii) in respect of any special reserve created by a financial corporation which is engaged in providing long-term finance for industrial development in India, an amount not exceeding—

- (a) in the case of a financial corporation whose paid-up share capital does not exceed three crores of rupees, twenty-five per cent,
- (b) in the case of any other financial corporation, ten per cent,
- (c) of the total income (computed before making any deduction under Chapter VIA) carried to such reserve account :

Provided that the corporation is for the time being approved by the Central Government for the purposes of this clause :

Provided further that where the aggregate of the amounts carried to such reserve account from time to time exceeds the paid-up share capital (excluding the amounts capitalised from reserves) of the corporation, no allowance under this clause shall be made in respect of such excess :

Explanation.—For the removal of doubts, it is hereby declared that in the

case of a financial corporation to which sub-clause (a) applies, if the amount carried to the reserve account referred to in this clause in the accounts of the previous year relevant to the assessment year commencing on the 1st day of April, 1966, falls short of twenty-five per cent of the total income and the amount transferred to such reserve account in the accounts of the immediately succeeding previous year exceeds the amount in respect of which the corporation is entitled to the deduction under this clause for the assessment year commencing on the 1st day of April, 1967, an amount equal to such excess shall, for the purpose of allowing the deduction under this clause, be deemed to have been transferred to the reserve account in the accounts of the first mentioned previous year.

(ix) any expenditure bonafide incurred by a company for the purpose of promoting family planning amongst its employees :

Provided that where such expenditure or any part thereof is of a capital nature, one-fifth of such expenditure shall be deducted for the previous year in which it was incurred ; and the balance thereof shall be deducted in equal instalments for each of the four immediately succeeding previous years :

Provided further that the provisions of sub-section (2) of Section 32 and of sub-section (2) of Section 72 shall apply in relation to deduction allowable under this clause as they apply in relation to deductions allowable in respect of depreciation :

Provided further that the provisions of clause (ii), (iii), (iv) and (v) of sub-section (2) and sub-section (5) of Section 35, of sub-section (3) of Section 41 and of Explanation 1 to clause (1) of Section 43 shall, so far as may be, apply in relation to an asset representing expenditure of a capital nature for the purpose of promoting family planning as they apply in relation to an asset representing expenditure of a capital nature on scientific research.

(2) In making any deduction for bad debt or part thereof, the following provisions shall apply :

(i) no such deduction shall be allowed unless such debt or part thereof—

(a) has been taken into account in computing the income of the assessee of that previous year or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which, is carried on by the assessee, and

(b) has been written off as irrecoverable in the accounts of the assessee for the previous year ;

(ii) if the amount ultimately recovered on any such debt or part of debt is less than the difference between the debt or part and the amount so deducted the deficiency shall be deductible in the previous year in which the ultimate recovery is made ;

(iii) any such debt or part of debt may be deducted if it has already been written off as irrecoverable in the accounts of an earlier previous year, but the Income-tax Officer had not allowed it to be deducted on the ground that it had not been established to have become a bad debt in that year ;

(iv) where any such debt or part of debt is written off as irrecoverable in the accounts of the previous year and the Income-tax Officer is satisfied that such debt or part became a bad debt in any earlier previous year not falling beyond a period of four previous years immediately preceding the previous year in which such debt or part is written off, the provisions of sub-section (6) of Section 155 shall apply.

37. General.—(1) Any expenditure (not being expenditure of the nature described in Sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession."

(2) Notwithstanding anything contained in sub-section (1), no expenditure in the nature of entertainment expenditure shall be allowed in the case of a company, which exceeds the aggregate amount computed as hereunder—

(i) on the first Rs. 10,00,000 of the profits and gains of the business (computed before making any allowance under Section 33 or Section 33A or in respect of entertainment expenditure) at the rate of 1% or Rs. 5,000, whichever is higher;

(ii) on the next Rs. 40,00,000 of the profits and gains of the business (computed in the manner aforesaid) at the rate of $\frac{1}{2}\%$;

(iii) on the next Rs. 1,20,00,000 of the profits and gains of the business (computed in the manner aforesaid) at the rate of $\frac{1}{4}\%$;

(iv) on the balance of the profits and gains of the business (computed in the manner aforesaid) nil.

(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2) no allowance shall be made in respect of so much of the expenditure in the nature of entertainment expenditure incurred by any assessee during any previous year which expires after the 30th day of September, 1967, as is in excess of the aggregate amount computed as hereunder—

(i) on the first Rs. 10,00,000 of the profits and gains of the business or profession (computed before making any allowance under Section 33 or Section 33A or in respect of entertainment expenditure) at the rate of $\frac{1}{2}\%$ or Rs. 5,000 whichever is higher;

(ii) on the next Rs. 40,00,000 of the profits and gains of the business or profession (computed in the manner aforesaid) at the rate of $\frac{1}{4}\%$;

(iii) on the next Rs. 1,20,00,000 of the profits and gains of the business or profession (computed in the manner aforesaid) at the rate of $\frac{1}{8}\%$;

(iv) on the balance of the profits and gains of the business or profession (computed in the manner aforesaid) nil.

Provided that where the previous year of any assessee falls partly before and partly after the 30th day of September, 1967, the allowance in respect of such expenditure incurred during the previous year shall not exceed—

(a) in the case of a company—

(i) in respect of such expenditure incurred before the 1st day of October, 1967, the sum which bears to the aggregate amount computed at the rate or rates specified in sub-section (2), the same proportion as the number of days comprised in the period commencing on the first day of such previous year and ending with the 30th day of September, 1967, bears to the total number of days in the previous year;

(ii) in respect of such expenditure incurred after the 30th day of September, 1967 the sum which bears to the aggregate amount computed at the rate or rates specified in this sub-section, the same proportion as the number of days comprised in the period commencing on the 1st day of October, 1967 and ending with the last day of the previous year bears to the total number of days in the previous year ;

(b) in any other case—

(i) in respect of such expenditure incurred before the 1st day of October, 1967, the amount admissible under sub-section (1) ;

(ii) in respect of such expenditure incurred after the 30th day of September, 1967, the sum which bears to the aggregate amount computed at the rate or rates specified in this sub-section, the same proportion as the number of days comprised in the period commencing on the 1st day of October, 1967 and ending with the last day of the previous year bears to the total number of days in the previous year.

Explanation.—For the purposes of this sub-section and sub-section (2B) "entertainment expenditure" includes—

(i) the amount of any allowance in the nature of entertainment allowance paid by the assessee to any employee or other person after the 29th day of February, 1968 ;

(ii) the amount of any expenditure in the nature of entertainment expenditure [not being expenditure incurred out of an allowance of the nature referred to in clause (i)] incurred after the 29th day of February, 1968, for the purposes of the business or profession of the assessee by any employee or other person.

(2B) Notwithstanding anything contained in this section, no allowance shall be made in respect of expenditure in the nature of entertainment expenditure incurred within India by any assessee after the 28th day of February, 1970.

(3) Notwithstanding anything contained in sub-section (1), any expenditure incurred by an assessee after the 31st day of March, 1964, on advertisement or maintenance of any residential accommodation including any accommodation in the nature of a guest house or in connection with travelling by an employee or any other person (including hotel expenses or allowances paid in connection with such travelling) shall be allowed only to the extent, and subject to such conditions, if any, as may be prescribed.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (3),—

(i) no allowance shall be made in respect of any expenditure incurred by the assessee after the 28th day of February, 1970, on the maintenance of any residential accommodation in the nature of a guest house (such residential accommodation being hereafter in this sub-section referred to as "guest house") ;

(ii) in relation to the assessment year, commencing on the 1st day of April, 1971, or any subsequent assessment year, no allowance shall be made in respect of depreciation of any building used as a guest house or depreciation of any assets in a guest house :

Provided that the aggregate of the expenditure referred to in clause (i) and the amount of any depreciation referred to in clause (ii) shall, for the purposes of this sub-section, be reduced by the amount, if any, received from persons using the guest house :

Provided further that nothing in this sub-section shall apply in relation to any guest house maintained as a holiday home if such guest house—

(a) is maintained by an assessee who has throughout the previous year employed not less than one hundred whole-time employees in a business or profession carried on by him; and

(b) is intended for the exclusive use of such employees while on leave.

Explanation.—For the purposes of this sub-section,—

(i) residential accommodation in the nature of a guest house shall include accommodation hired or reserved by the assessee in a hotel for a period exceeding one hundred and eighty-two days during the previous year: and

(ii) the expenditure incurred on the maintenance of a guest house shall, in a case where the residential accommodation has been hired by the assessee, include also the rent paid in respect of such accommodation.

38. Building, etc. partly used for business etc., or not exclusively so used.—

(1) Where a part of any premises is used as dwelling house by the assessee

(a) the deduction under sub-clause (i) of clause (a) of Section 30 in the case of rent, shall be such amount as the Income-tax Officer may determine having regard to the proportionate annual value of the part used for the purpose of the business or profession, and in the case of any sum paid for repairs, such sum as is proportionate to the part of the premises for the purpose of the business or profession.

(b) the deduction under clause (b) of Section 30 shall be such sum as the Income-tax Officer may determine having regard to the part so used.

(2) Where any building, machinery, plant or furniture is not exclusively used for the purpose of the business or profession, the deduction under sub-clause (ii) of clause (a) and clause (c) of Section 30, clauses (i) and (ii) of Section 31 and clauses (i), (ii) and (iii) of sub-section (1) of Section 32 shall be restricted to a fair proportionate part thereof which the Income-tax Officer may determine, having regard to the user of such building, machinery, plant or furniture for the purposes of the business or profession.

39. Managing agency commission.—Where a managing agent of a company, is liable under an agreement in writing made for adequate consideration to share managing agency commission with a third party, the said agent and the said party or parties shall file a declaration showing the proportion in which such commission is shared between them under the agreement, and on proof to the satisfaction of the Income-tax Officer of the facts contained in such declaration, such agent and each such party shall be chargeable only on the share to which such agent or party is entitled under the agreement.

40. Amount not deductible.—Notwithstanding anything to the contrary in Sections 30 to 39, the following amounts shall not be deducted in computing the income chargeable under the head “Profits and gains of business or profession.”

(a) in the case of any assessee—

(i) any interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938), on which tax has not been paid or deducted under Chapter XVII-B and in respect of which there is no person in India who may be treated as an agent under Section 163;

(ii) any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any profits or gains ;

(iii) any payment which is chargeable under the head "Salaries", if it is payable outside India if the tax has not been paid thereon nor deducted therefrom under Chapter XVII-B ;

(iv) any payment to a provident or other fund established for the benefit of employees of the assessee, unless the assessee has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head "Salaries" ;

(v) any expenditure which results directly or indirectly in the provision of any benefit or amenity or perquisite, whether convertible into money or not, to an employee (including any sum paid by the assessee in respect of any obligation which but for such payment would have been payable by such employee) or any expenditure or allowance in respect of any assets of the assessee used by such employee either wholly or partly for his own purposes or benefit, to the extent such expenditure or allowance exceeds one-fifth of the amount of salary payable to the employee, or an amount calculated at the rate of one thousand rupees for each month or part thereof comprised in the period of his employment during the previous year, whichever is less.

Provided that in computing the aforesaid expenditure or allowance the following shall not be taken into account, namely

- (a) any payment by way of gratuity ;
- (b) the value of any travel concession or assistance referred to in clause (5) of Section 10 ;
- (c) passage moneys or the value of any free or concessional passage referred to in sub-clause (i) of clause (6) of Section 10 ;
- (d) any payment of tax referred to in sub-clause (vii) of clause (6) of Section 10 ;
- (e) any sum referred to in sub-clause (vii) of clause (1) of Section 17 ;
- (f) any sum referred to in sub-clause (v) of clause (2) of Section 17 ;
- (g) the amount of any compensation referred to in sub-clause (i) or any payment referred to in sub-clause (ii) of clause (3) of Section 17 ;
- (h) any payment referred to in clause (iv) or clause (v) of sub-section (1) of Section 36 ; and
- (i) any expenditure referred to in clause (ix) of sub-section (1) of Section 36 :

Provided further that nothing in this sub-clause shall apply to any expenditure which results directly or indirectly in the provision of any benefit or amenity or perquisite to any employee whose income chargeable under the head "Salaries" is seven thousand five hundred rupees or less.

Explanation 1.—The provisions of this sub-clause shall apply notwithstanding that any amount not to be allowed under this sub-clause is included in the total income of the employee.

Explanation 2.—In this sub-clause, the word "Salary" shall have the meaning assigned to it in clause (h) of rule 2 of Part A of the Fourth Schedule.

(4) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any payment in respect of any expenditure has to be made by a crossed cheque drawn in order that such expenditure may not be disallowed as a deduction under sub-section (3), then the payment may be made by such cheque or draft; and where the payment is so made or tendered, no person shall be allowed to raise, in any suit or other proceeding, a plea based on the ground that the payment was not made or tendered in cash or in any other manner.

41. Profits chargeable to tax.—(1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee, and subsequently during any previous year the assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him or the value of benefit accruing to him, shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not.

(2) Where any building, machinery, plant or furniture which is owned by the assessee and which was or has been used for the purposes of business or profession is sold, discarded, demolished or destroyed and the moneys payable in respect of such building, machinery, plant or furniture, as the case may be, so much of the excess as does not exceed the difference between the actual cost and the written down value shall be chargeable to income-tax as income of the business or profession of the previous year in which the moneys payable, for the building, machinery, plant or furniture became due :

Provided that where the building sold, discarded, demolished or destroyed is a building to which Explanation 5 to Section 43 applies, and the moneys payable in respect of such building, together with the amount of scrap value, if any, exceed the actual cost as determined under that Explanation, so much of the excess as does not exceed the difference between the actual cost so determined and the written down value shall be chargeable to income-tax as income of the business or profession of such previous year.

Explanation.—Where the moneys payable in respect of the building, machinery, plant or furniture referred to in this sub-section become due in a previous year in which the business or profession, for the purpose of which the building, machinery, plant or furniture was being used is no longer in existence, the provisions of this sub-section shall apply as if the business or profession is in existence in that previous year.

(3) Where an asset representing expenditure of a capital nature on scientific research within the meaning of clause (iv) of sub-section (1) of Section 35, read with clause (4) of Section 43, is sold, without having been used for other purposes, and the proceeds of the sale together with the total amount of the deductions made under clause (i) of sub-section (2) of Section 35 exceed the amount of the capital expenditure, the excess or the amount of the deductions so made, whichever is the less, shall be chargeable to income-tax as income of the business or profession of the previous year in which the sale took place.

Explanation.—Where the moneys payable in respect of any asset referred to in this sub-section become due in a previous year in which the business is no

longer in existence, the provisions of this sub-section shall apply as if the business is in existence in that previous year.

(4) Where a deduction has been allowed in respect of bad debt or part of debt under the provisions of clause (vii) of sub-section (1) of Section 36, then, if the amount subsequently recovered on any such debt and the amount so allowed, the excess shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of the previous year in which it is recovered, whether the business or profession in respect of which the deductions has been allowed is in existence in that year or not.

Explanation.—The expression “moneys payable” and the expression “sold” in sub-sections (2) and (3) shall have the same meanings as in sub-section (1) of Section 32.

(5) Where the business or profession referred to in this section is no longer in existence and there is income chargeable to tax under sub-section (1), sub-section (2), sub-section (3) or sub-section (4) in respect of that business or profession, any loss, not being a loss sustained in speculation business or under the head “Capital gains”, which arose in that business or profession during the previous year in which it ceased to exist and which could not be set off against any other income of that previous year shall so far as may be, set off against the income chargeable to tax under the sub-sections aforesaid.

42. Special provisions for deductions in the case of business for prospecting etc., for mineral oil.—For the purpose of computing the profits or gains of any business consisting of the prospecting for or extraction or production of mineral oils in relation to which the Central Government has entered into an agreement with any person for the association or participation in such business of the Central Government (which agreement has been laid on the Table of each House of Parliament) there shall be made in lieu of, or in addition to, the allowance admissible under this Act, such allowances as are specified in the agreement in relation—

(a) to expenditure by way of infructuous or abortive exploration expenses in respect of any area surrendered prior to the beginning of commercial production by the assessee;

(b) after the beginning of commercial production, to expenditure incurred by the assessee, whether before or after such commercial production, in respect of drilling or exploration activities or services or in respect of physical assets used in that connection, except assets on which allowance for depreciation is admissible under Section 32; and

(c) to the depletion of mineral oil in the mining area in respect of the assessment year relevant to the previous year in which commercial production is begun for such succeeding year or years as may be specified in the agreement;

and such allowances shall be computed and made in the manner specified in the agreement, the other provisions of this Act being deemed for this purpose to have been modified to the extent necessary to give effect to the terms of the agreement.

43. Definitions of certain terms relevant to income from profits and gains of business or profession.—In Sections 28 to 41 and in this section, unless the context otherwise requires—

(1) “actual cost” means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority:

Provided that where the actual cost of an asset, being a motor car which is acquired by the assessee after the 31st day of March, 1967, and is used otherwise than in a business of running it on hire for tourists, exceeds twenty-five thousand rupees, the excess of the actual cost over such amount shall be ignored, and the actual cost thereof shall be taken to be twenty-five thousand rupees.

Explanation 1.—Where an asset is used in the business after it ceases to be used for scientific research related to that business and a deduction has to be made under clause (i), clause (ii) or clause (iii) of sub-section (1) of Section 32 in respect of that asset, the actual cost of the asset to the assessee shall be the actual cost to the assessee as reduced by the amount of any deduction allowed under clause (iv) of sub-section (1) of Section 35 or under any corresponding provision of the Indian Income-tax Act, 1922 (11 of 1922).

Explanation 2.—Where an asset is acquired by the assessee by way of gift or inheritance, the actual cost of the asset to the assessee shall be the written down value thereof as in the case of the previous owner for the previous year in which the asset is so acquired or the market value thereof on the date of such acquisition, whichever is the less.

Explanation 3.—Where, before the date of acquisition by the assessee, the assets were at any time used by any other person for the purposes of his business or profession and the Income-tax Officer is satisfied that the main purpose of the transfer of such assets, directly or indirectly to the assessee, was the reduction of a liability to income-tax (by claiming depreciation with reference to an enhanced cost), the actual cost to the assessee shall be such an amount as the Income-tax Officer may, with the previous approval of the Inspecting Assistant Commissioner, determine having regard to all the circumstances of the case.

Explanation 4.—Where assets which had once belonged to the assessee and had been used by him for the purposes of his business or profession and thereafter ceased to be his property by reason of transfer or otherwise, are re-acquired by him, the actual cost to him when he first acquired the assets less the depreciation actually allowed to him under this Act or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), diminished by any loss deducted or as the case may be, increased by any profit assessed, under the provisions of the clause (iii) of sub-section (1) of Section 32 or sub-section (2) of Section 41 of this Act or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), or the actual price for which the asset is re-acquired by him, whichever is the less.

Explanation 5.—Where a building previously the property of the assessee is brought into use for the purpose of the business or profession after the 28th day of February, 1946, the actual cost to the assessee shall be the actual cost of the building to the assessee, as reduced by an amount equal to the depreciation calculated at the rate in force on that date that would have been allowable had the building been used for the aforesaid purposes since the date of its acquisition by the assessee.

Explanation 6.—When any capital asset is transferred by a holding company to its subsidiary company or, by a subsidiary company to its holding company, then, if the conditions of clause (iv) or as the case may be, of clause (v) of Section 47 are satisfied, the actual cost of the transferred capital asset to the transferee company shall be taken to be the same as it would have been if the

transferor company had continued to hold the capital asset for the purposes of its business.

Explanation 7.—Where, in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company, the actual cost of the transferred capital have been if the amalgamating company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purposes of its own business ;

(2) “paid” means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under the head “Profits and gains of business or profession” ;

(3) “plant” includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession ;

(4) (i) “scientific research” means any activities for the extension of knowledge in the fields of natural or applied science including agriculture, animal husbandry or fisheries ;

(ii) reference to expenditure incurred on scientific research include all expenditure incurred for the prosecution, or the provision of facilities for the prosecution, of scientific research, but do not include any expenditure incurred in the acquisition or rights in, or arising out of scientific research ;

(iii) references to scientific research related to a business or class of business include—

(a) any scientific research which may lead to or facilitate an extension of that business or, as the case may be, all business of that class ;

(b) any scientific research of a medical nature which has special relation to the welfare of workers employed in that business or, as the case may be, all business of that class ;

(5) “speculative transaction” means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips :

Provided that for the purposes of this clause—

(a) a contract in respect of raw material or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him ; or

(b) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations ; or

(c) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member ;

shall not be deemed to be a speculative transaction ;

(6) “written down value” means—

(a) in the case of assets acquired in the previous year the actual cost to the assessee ;

(b) in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation actually allowed to him under this Act, or under the Indian Income-tax Act, 1922 (11 of 1922) or any Act repealed by that Act, or under any executive orders issued when the Indian Income-tax Act, 1886 (2 of 1886) was in force :

Provided that in determining the written down value in respect of buildings, machinery or plant for the purposes of clause (ii) of sub-section (1) of Section 32, "depreciation actually allowed" shall not include depreciation allowed under sub-clauses (a), (b) and (c) of clause (vi) of sub-section (2) of Section 10 of the Indian Income-tax Act, 1922 (11 of 1922), where such depreciation was not deductible in determining the written down value for the purposes of the said clause (vi).

Explanation 1.—When in a case of succession in business or profession an assessment is made on the successor under sub-section (2) of Section 170 the written down value of any asset shall be the amount which would have been taken as its written down value if the assessment had been made directly on the person succeeded to.

Explanation 2.—When any capital asset is transferred by holding company, then, if the conditions of clause (iv) or, as the case may be, of clause (v) of Section 47 are satisfied, the written down value of the transferred capital asset to the transferee company shall be taken to be the same as it would have been if the transferor company had continued to hold the capital asset for the purposes of its business.

Explanation 2A.—Where, in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company, the written down value of the transferred capital asset to the amalgamated company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purposes of its business.

Explanation 3.—Any allowance in respect of any depreciation carried forward under sub-section (2) of Section 32 shall be deemed to be depreciation "actually allowed".

43A. Special provisions consequential to changes in rate of exchange of currency.—(1) Notwithstanding anything contained in any other provision of this Act, where an assessee has acquired any asset from a company outside India for the purposes of his business or profession and, in consequence of a change in the rate of exchange at any time after the acquisition of such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency for making payment towards the whole or a part of the cost of the asset or for repayment of the whole or a part of the money borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset (being in either case the liability existing immediately before the date on which the change in the rate of exchange takes effect), the amount by which the liability aforesaid is so increased or reduced during the previous year shall be added to, or, as the case may be, deducted from, the actual cost of the asset as defined in clause (1) of Section 43 or the amount of expenditure of a capital nature referred to in clause (iv) of sub-section (1) of Section 35 or in Section 35A or in clause (ix) of sub-section (1) of Section 36 or in the case of a capital asset (not being

a capital asset referred to in Section 50), the cost of acquisition thereof for the purposes of Section 48, and the amount arrived at after such addition or deduction shall be taken to be the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be the cost of acquisition of the capital asset as aforesaid.

Explanation 1.—In this sub-section, unless the context otherwise requires,—

(a) “rate of exchange” means the rate of exchange determined or recognised by the Central Government for the conversion of Indian currency into foreign currency or foreign currency into Indian currency ;

(b) “foreign currency” and “Indian currency” have the meanings respectively assigned to them in Section 2 of the Foreign Exchange Regulation Act, 1947.

Explanation 2.—Where the whole or any part of the liability aforesaid is met, not by the assessee, but directly or indirectly, by any other person or authority, the liability so met shall not be taken into account for the purposes of this sub-section.

Explanation 3.—Where the assessee has entered into a contract with an authorised dealer as defined in Section 2 of the Foreign Exchange Regulation Act, 1947 for providing him with a specified sum in a foreign currency on or after a stipulated future date at the rate of exchange specified in the contract to enable him to meet the whole or any part of the liability aforesaid, the amount, if any, to be added to, or deducted from, the actual cost of the asset or the amount of expenditure of a capital nature or as the case may be, the cost of acquisition of the capital asset under this sub-section shall, in respect of so much of the sum specified in the contract as is available for discharging the liability aforesaid, be computed with reference to the rate of exchange specified, therein.

(2) The provisions of sub-section (1) shall not be taken into account in computing the actual cost of an asset for the purposes of the deduction on account of development rebate under Section 33.

44. Insurance business.—Notwithstanding anything to the contrary contained in the provisions of the Act relating to the computation of income chargeable under the head “Interest on securities”, “Income from house property”, “Capital gains” or “Income from other sources” or in Section 199 or in Sections 28 to 43A profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or by a co-operative society, shall be computed in accordance with the rules contained in the First Schedule.

44A. Special provision for deduction in the case of trade, professional or similar association.—(1) Notwithstanding anything to the contrary contained in this Act, where the amount received during a previous year by any trade, professional or similar association [other than an association or institution referred to in clause (23A) of Section 10] from its members, whether by way of subscription or otherwise (not being remuneration received for rendering any specific services to such members) falls short of the expenditure incurred by such association during that previous year (not being expenditure deductible in computing the income under any other provision of this Act and not being in the nature of capital expenditure) solely for the purposes of protection or advancement of the common interests of its members, the amount so fallen short

(hereinafter referred to as deficiency) shall, subject to the provisions of this section, be allowed as a deduction in computing the income of the association assessable for the relevant assessment year under the head "Profits and gains of business or profession" and if there is no income assessable under that head or the deficiency allowable exceeds such income, the whole or the balance of the deficiency, as the case may be, shall be allowed as a deduction in computing the income of the association assessable for the relevant assessment year under any other head.

(2) In computing the income of the association for the relevant assessment year under sub-section (1), effect shall first be given to any other provision of this Act under which any allowance or loss in respect of any earlier assessment year is carried forward and set off against the income for the relevant assessment year.

(3) The amount of deficiency to be allowed as a deduction under this section shall in no case exceed one-half of the total income of the association as computing before making any allowance under this section.

(4) This section applies only to that trade, professional or similar association the income of which or any part thereof is not distributed to its members except as grants to any association or institution affiliated to it.

E.—Capital gains

45. Capital gains.—(1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in Sections 53, 54 and 54B be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place.

(2), (3) and (4) Omitted.

46. Capital gains on distribution of assets by companies in liquidation.—

(1) Notwithstanding anything contained in Section 45, where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of Section 45.

(2) Where a shareholder on the liquidation of a company receives any money or other assets from the company he shall be chargeable to income-tax under the head "Capital gains", in respect of the money so received or the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of sub-clause (c) of clause (22) of Section 2 and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of Section 48.

47. Transaction not regarded as transfers.—Nothing contained in Section 45 shall apply to the following transfers—

(i) any distribution of capital assets on the total or partial partition of a Hindu undivided family ;

(ii) any distribution of capital assets on the dissolution of a firm, body of individuals or other association of persons ;

(iii) any transfer of a capital asset under a gift or will or an irrevocable trust ;

(iv) any transfer of a capital asset by a company to its subsidiary company, if—

- (a) the parent company or its nominees hold the whole of the share capital of the subsidiary company, and
- (b) the subsidiary company is an Indian company ;
- (v) any transfer of a capital asset by a subsidiary company to the holding company if—
 - (a) the whole of the share capital of the subsidiary company is held by the holding company, and
 - (b) the holding company is an Indian company ;
- (vi) any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company ;
- (vii) any transfer by a shareholder, in a scheme of amalgamation of a capital asset being a share or shares held by him in the amalgamating company if—
 - (a) the transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company, and
 - (b) the amalgamated company is an Indian company.
- (viii) any transfer of agricultural land in India effected before the 1st day of March, 1970.

48. Mode of computation and deductions.—The income chargeable under the head “Capital gains” shall be computed by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely—

- (i) expenditure incurred wholly and exclusively in connection with such transfer ;
- (ii) the cost of acquisition of the capital asset and the cost of any improvement thereto.

49. Cost with reference to certain modes of acquisition.—(1) Where the capital asset became the property of the assessee—

- (i) on any distribution of assets on the total or partial partition of a Hindu undivided family ;
- (ii) under a gift or will ;
- (iii) (a) by succession, inheritance or devolution, or
- (b) on any distribution of assets on the dissolution of a firm, body of individuals or other association of persons, or
- (c) on any distribution of assets on the liquidation of a company, or
- (d) under a transfer to a revocable or an irrevocable trust, or
- (e) under any such transfer as is referred to in clause (iv) or clause (v) or clause (vi) of Section 47,

the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

Explanation.—In this sub-section the expression “previous owner of the property” in relation to any capital asset owned by an assessee means the last

previous owner of the capital asset who acquired it by a mode of acquisition other than that referred to in clause (i) or clause (ii) or clause (iii) of this sub-section.

(2) Where the capital asset being a shares or shares in an amalgamated company which is an Indian company became the property of the assessee in consideration of a transfer referred to in clause (vii) of Section 47, the cost of acquisition of the asset shall be deemed to be cost of acquisition to him of the share or shares in the amalgamating company.

50. Special provision for computing cost of acquisition in the case of depreciable assets.—Where the capital asset is an asset in respect of which a deduction on account of depreciation has been obtained by the assessee in any previous year either under this Act or under the Indian income-tax Act, 1922 (11 of 1922), or any Act repealed by that Act, or under executive orders issued when the Indian Income-tax Act, 1886 (2 of 1886) was in force, the provisions of Sections 48 and 49 shall be subject to the following modifications—

(1) The written down value, as defined in clause (6) of Section 43 of the asset, as adjusted, shall be taken as the cost of acquisition of the asset.

(2) Where under any provision of Section 49, read with sub-section (2) of Section 55, the fair market value of the asset on the 1st day of January, 1954, is to be taken into account at the option of the assessee, then, the cost of acquisition of the asset shall, at the option of the assessee, be the fair market value of the asset on the said date, as reduced by the amount of depreciation, if any, allowed to the assessee after the said date, and as adjusted.

51. Advance money received.—Where any capital asset was on any previous occasion the subject of negotiations for its transfer, any advance or other money received and retained by the assessee in respect of such negotiations shall be deducted from the cost for which the asset was acquired or the written down value or the fair market value as the case may be, in computing the cost of acquisition.

52. Consideration for transfer in cases of under-statement.—(1) Where the person who acquires a capital asset from an assessee is directly or indirectly connected with the assessee and the Income-tax Officer has reason to believe that the transfer was with object of avoidance or reduction of the liability of the assessee under Section 45, the full value of the consideration for the transfer shall, with the previous approval of the Inspecting Assistant Commissioner, be taken to be the fair market value of the capital asset on the date of the transfer.

(2) Without prejudice to the provisions of sub-section (1) if in the opinion of the Income-tax Officer the fair market value of a capital asset transferred by an assessee as on the date of the transfer exceeds the full value of the consideration declared by the assessee in respect of the transfer of such capital asset by an amount of not less than fifteen per cent of the value so declared, the full value of the consideration for such capital asset shall, with the previous approval of the Inspecting Assistant Commissioner, be taken to be its fair market value on the date of its transfer.

53. Capital gains exempt from tax.—Notwithstanding anything contained in Section 45, where a capital gain arises from the transfer of one or more capital assets, being buildings or lands appurtenant thereto, the income of which is chargeable under the head "Income from house property", and the full aggregate value of the consideration for which the transfer is made does not exceed twenty-five thousand rupees, the capital gain shall not be included in the

total income of the assessee :

Provided that this section shall not apply in any cases where the aggregate of the fair market values of all capital assets, being buildings or lands appurtenant thereto the income of which is chargeable under the head "Income from house property" owned by the assessee immediately before the transfer aforesaid is made, exceeds the sum of rupees fifty thousand.

54. Profits on sale of property used for residence.—Where a capital gain arises from the transfer of a capital asset to which the provisions of Section 53 are not applicable, being buildings or lands appurtenant thereto the income of which is chargeable under the head "Income from house property", which in the two years immediately preceding the date on which the transfer took place was being used by the assessee or a parent of his, mainly for the purposes of his own or the parent's own residence, and the assessee has within a period of one year before or after that date purchased, or has within a period of two years after that date constructed, a house property for the purposes of his own residence, then, instead of the capital gains being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say:—

(i) if the amount of the capital gain is greater than the cost of the new asset, the difference between the amount of the capital gain and the cost of the new asset shall be charged under Section 45 as the income of the previous year ; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil ; or

(ii) if the amount of the capital gain is equal or less than the cost of the new asset, the capital gain shall not be charged under Section 45 ; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

54A. Relief of tax on capital gains in certain cases.—(1) Where in the case of an assessee, being an individual who is not a citizen of India or being a company which is not an Indian company, a capital gain arises from the transfer of a capital asset, being shares in an Indian company, and the assessee has, within a period of two years from the date of such transfer, re-invested the full value of the consideration or any part thereof received or accruing as a result of such transfer in an investment approved by the Central Government in this behalf (hereinafter in this section referred to as the approved investment), the assessee shall, subject to the provisions of sub-section (3), be entitled to a credit of a sum calculated in accordance with the provisions of sub-section (2).

(2) The amount to be given as credit under sub-section (1) shall be a sum which bears to the amount of income-tax payable by the assessee on the income chargeable under the head "Capital gains" arising from the transfer referred to in sub-section (1) the same proportion as the amount invested in the approved investment as reduced by the cost of acquisition [as ascertained for the purposes of clause (ii) of Section 48] of the transferred shares bears to the capital gains arising from such transfer.

(3) The amount of credit so calculated shall be given in the following manner, namely—

(a) if the approved investment is made by the assessee within the period

of two years aforesaid and before the completion of the assessment in respect of the year in which the income arising from such transfer is chargeable to tax, the amount of the credit shall, on the assessee making a claim in this behalf in the prescribed form and in the prescribed manner, be adjusted against the tax payable by the assessee in respect of that assessment year, and

(b) if the approved investment is made by the assessee within the period of two years aforesaid but after the assessment for the relevant year is made, the amount of the credit shall, on the assessee making a claim in the prescribed form and in the prescribed manner, be deemed to be refund due to the assessee under Chapter XIX and all the provisions of this Act shall apply accordingly.

54B. Capital gain on transfer of land used for agricultural purpose not to be charged in certain cases.—Where the capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his for agricultural purposes, and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(i) if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under Section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under Section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced by the amount of the capital gain.

55. Meaning of “adjusted”, “cost of improvement” and “cost of acquisition”.—(1) For the purposes of Sections 48, 49 and 50,—

(a) “adjusted”, in relation to written down value or fair market value, means diminished by any loss deducted or increased by any profit assessed, under the provisions of clause (iii) of sub-section (1) of Section 32 or sub-section (2) of Section 41, as the case may be, the computation for this purpose being made with reference to the period commencing from the 1st day of January, 1954, in cases to which clause (2) of Section 50 applies;

(b) “cost of any improvement”, in relation to a capital asset,—

(i) where the capital asset became the property of the previous owner or the assessee before the 1st day of January, 1954, and the fair market value of the asset on that day is taken as the cost of acquisition at the option of the assessee, means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset on or after the said date by the previous owner or the assessee, and

(ii) in any other case, means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset by the assessee after it became his property, and where the capital asset became the property

of the assessee by any of the modes specified in sub-section (1) of Section 49, by the previous owner,

but does not include any expenditure which is deductible in computing the income chargeable under the head "Interest on securities", "Income from house property", "Profits and gains of business or profession", or "Income from other sources", and the expression "improvement" construed accordingly.

(2) For the purposes of Sections 48 and 49, "cost of acquisition", in relation to a capital asset,—

(i) where the capital asset became the property of the assessee before the 1st day of January, 1954, means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the 1st day of January, 1954 at the option of the assessee ;

(ii) where the capital asset became the property of the assessee by any of the modes specified in sub-section (1) of Section 49, and the capital asset became the property of the previous owner before the 1st day of January, 1954, means the cost of the capital asset to the previous owner or the fair market value of the asset on the 1st day of January, 1954, at the option of the assessee ;

(iii) where the capital asset became the property of the assessee on the distribution of the capital assets of a company on its liquidation and the assessee has been assessed to income-tax under the head "Capital gains" in respect of that asset under Section 46, means the fair market value of the asset on the date of distribution ;

(iv) Omitted.

(v) where the capital asset, being a share or a stock of a company, became the property of the assessee on—

- (a) the consolidation and division of all or any of the share capital of the company into shares of larger amount than its existing shares,
- (b) the conversion of any shares of the company into stock,
- (c) the re-conversion of any stock of the company into shares,
- (d) the division of any of the shares of the company into shares of smaller amount, or
- (e) the conversion of one kind of shares of the company into another kind,

means the cost of acquisition of the asset calculated with reference to the cost of acquisition of the shares or stock from which such asset is derived.

(3) Where the cost for which the previous owner acquired the property cannot be ascertained, the cost of acquisition to the previous owner means the fair market value on the date on which the capital asset became the property of the previous owner.

F.—Income from other sources

56. Income from other sources.—(1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in Section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provision—

of sub-section (1), the following income shall be chargeable to income-tax under the head "Income from other source", namely—

- (i) dividends ;
- (ia) income referred to in sub-clause (viii) of clause (24) of Section 2,
- (ii) income from machinery, plant or furniture belonging to the assessee and let on hire, if the income is not chargeable to income-tax under the head "Profits and gains of business or profession" ;
- (iii) where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to income-tax under the head "Profits and gains of business or profession".

57. Deductions.—The income chargeable under the head, "Income from other sources" shall be computed after making the following deductions namely—

- (i) in the case of dividends, any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend on behalf of the assessee ;
- (ii) in the case of income of the nature referred to in clauses (ii) and (iii) of sub-section (2) of Section 56, deductions, so far as may be, in accordance with the provisions of sub-clause (ii) of clause (a) and clause (c) of Section 30, Section 31, and sub-sections (1) and (2) of Section 32 and subject to the provisions of Sections 34 and 38 ;
- (iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income.

58. Amounts not deductible.—(1) Notwithstanding anything to the contrary contained in Section 57, the following amounts shall not be deductible in computing the income chargeable under the head "Income from other sources", namely—

- (a) in the case of any assessee—
 - (i) any personal expense of the assessee ;
 - (ii) any interest chargeable under this Act which is payable outside India (not being interest on a loan issued for public subscription before the 1st day of April, 1938) on which tax has not been paid or deducted under Chapter XVII-B and in respect of which there is no person in India who may be treated as an agent under Section 163 ;
 - (iii) any payment which is chargeable under the head "Salaries", if it is payable outside India, unless tax has been paid thereon or deducted therefrom under Chapter XVII-B ;
 - (iv) any expenditure or allowance of the nature referred to in sub-clause (v) of clause (a) of Section 40, notwithstanding that the amount thereof is included in the total income of any employee referred to therein ;
- (b) in the case of a company, any expenditure or allowance of the nature referred to in clause (c) of Section 40, notwithstanding that the amount thereof is included in the total income of any person referred to in sub-clause (i) of clause (c) of Section 40.

(2) The provisions of Section 40A shall, so far as may be, apply in compu-

ting the income chargeable under the head "Income from other sources" as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

59. Profits chargeable to tax.—(1) The provisions of sub-section (1) of Section 41 shall apply, so far as may be, in computing the income of an assessee under Section 56, as they apply in computing the income of an assessee under the head "Profits and gains of business or profession".

(2) When any buildings, machinery, plant or furniture to which clauses (ii) and (iii) of sub-section (2) of Section 56 apply are sold, discarded, demolished or destroyed, the provisions of sub-section (2) of Section 41 shall apply, so far as may be, in computing the income of an assessee under Section 56 as they apply in computing the income of an assessee under the head "Profits and gains of business or profession".

Explanation.—For the purpose of this section, the expression "sold" shall have the same meaning as in sub-section (1) of Section 32.

CHAPTER V

INCOME OF OTHER PERSONS, INCLUDED IN ASSESSEE'S TOTAL INCOME

60. Transfer of income where there is no transfer of assets.—All income arising to any person by virtue of a transfer whether revocable or not and whether effected before or after the commencement of this Act, shall, where there is no transfer of the assets from which the income arises, be chargeable to income-tax as the income of the transferor and shall be included in his total income.

61. Revocable transfer of assets.—All income arising to any person by virtue of a revocable transfer of assets shall be chargeable to income-tax as the income of the transferor and shall be included in his total income.

62. Transfer irrevocable for a specified period.—(1) The provisions of Section 61 shall not apply to any income arising to any person by virtue of a transfer—

(i) by way of trust which is not revocable during the lifetime of the beneficiary, and in the case of any other transfer, which is not revocable during the lifetime of the transferee; or

(ii) made before the 1st day of April, 1961, which is not revocable for a period exceeding six years;

Provided that the transferor derives no direct benefit from such income in either case.

(2) Notwithstanding anything contained in sub-section (1) all income arising to any person by virtue of any such transfer shall be chargeable to

income-tax as the income of the transferor as and when power to revoke the transfer arises, and shall then be included in his total income.

63. "Transfer" and "revocable transfer" defined.—For the purposes of Sections 60 and 62 and of this section,—

(a) a transfer shall be deemed to be revocable if—

(i) it contains any provision for the re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor, or

(ii) it, in any way, gives the transferor a right to reassume power directly or indirectly over the whole or any part of the income or assets ;

(b) "transfer" includes any settlement, trust, covenant, agreement or arrangement.

64. Income of individual to include income of spouse, minor child etc.—In computing the total income of any individual, there shall be included all such income as arises directly or indirectly—

(i) to the spouse of such individual from the membership of the spouse in a firm carrying on a business in which such individual is a partner ;

(ii) to a minor child of such individual from the admission of the minor to the benefits of partnership in a firm in which such individual is a partner ;

(iii) subject to the provisions of clause (i) of Section 27, to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart ;

(iv) subject to the provisions of clause (i) of Section 27, to a minor child, not being a married daughter of such individual, from assets transferred directly or indirectly to the minor child by such individual otherwise than for adequate consideration ; and

(v) to any person or association of persons from assets transferred otherwise than for adequate consideration to the person or association of persons by such individual, to the extent to which the income from such assets is for the immediate or deferred benefit of his or her spouse or minor child (not being a married daughter) or both.

Explanation.—For the purpose of clause (i), the individual in computing whose total income referred to in that clause is to be included shall be the husband or wife whose total income (excluding the income referred to in that clause) is greater ; and, for the purpose of clause (ii), where both the parents are members of the firm in which the minor child is a partner, the income of the minor child from the partnership shall be included in the income of the parent whose total income (excluding the income referred to in that clause) is greater ; and where any such income is once included in the total income of either spouse or parent, any such income arising in any succeeding year shall not be included in the total income of the other spouse or parent unless the Income-tax Officer is satisfied, after giving that spouse or parent an opportunity of being heard, that it is necessary so to do.

65. Liability of person in respect of income included in the income of another person.—Where, by reason of the provisions contained in this Chapter or in clause (i) of Section 27, the income from any asset or from membership in a firm of a person other than the assessee is included in the total income of the

assessee, the person in whose name such asset stands or who is a member of the firm shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be liable, on the service of a notice of demand by the Income-tax Officer in this behalf, to pay that portion of the tax levied on the assessee which is attributable to the income so included and the provisions of Chapter XVII-D shall, so far as may be, apply accordingly.

Provided that where any such asset is held jointly by more than one person, they shall be jointly and severally liable to pay the tax which is attributable to the income from the assets so included.

CHAPTER VI

AGGREGATION OF INCOME AND SET OFF OR CARRY FORWARD OF LOSS

Aggregation of Income

66. Total income.—In computing the total income of an assessee, there shall be included all income on which no income-tax is payable under Chapter VII.

67. Method of computing a partner's share in the income of the firm.—

(1) In computing the total income of an assessee who is a partner of a firm, whether the net result of the computation of total income of the firm is a profit or a loss, his share (whether a net profit or a net loss) shall be computed as follows—

(a) any interest, salary, commission or other remuneration paid to any partner in respect of the previous year and, where the firm is a registered firm, the income-tax, if any, payable by it in respect of the total income of the previous year, shall be deducted from the total income of the firm and the balance ascertained and apportioned among the partners ;

(b) where the amount apportioned to the partner under clause (a) is a profit, any salary, interest, commission or other remuneration paid to the partner by the firm in respect of the previous year shall be added to that amount, and the result be treated as the partner's share in the income of the firm ;

(c) where the amount apportioned to the partner under clause (a) is a loss, any salary, interest, commission or other remuneration paid to the partner by the firm in respect of the previous year shall be adjusted against that amount and the result shall be treated as the partner's share in the income of the firm ;

(2) The share of a partner in the income or loss of the firm, as computed under sub-section (1), shall, for the purposes of assessment, be apportioned under the various heads of income in the same manner in which the income or loss of the firm has been determined under each head of income.

(3) Any interest paid by a partner on capital borrowed by him for the purposes of investment in the firm shall, in computing his income chargeable under the head "Profits and gains of business or profession" in respect of his share in the income of the firm, be deducted from the share.

(4) If the share of a partner in the income of a registered firm or a firm treated as registered in accordance with the provisions of clause (b) of Section 183, as computed under this section, is a loss, such loss, may be set off, or carried forward and set off, in accordance with the provisions of this Chapter.

Explanation.—In this section, “paid” has the same meaning as is assigned to it in clause (2) of Section 43.

68. Cash credits.—Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers an explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

69. Unexplained investments.—Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investment or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee for such financial year.

69A. Unexplained money etc.—Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

69B. Amount of investment, etc. not fully disclosed in books of account.—Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Income-tax Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Income-tax Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.

Set off, or carry forward and set off

70. Set off of loss from one source against income from another source under the same head of income.—(1) Save as otherwise provided in this Act, where the net result for any assessment year in respect of any source falling under any head of income other than ‘Capital gains’, is a loss, the assessee shall be entitled to have the amount of such loss set off against his income from any other source under the same head.

(2) (i) Where the result of the computation made for any assessment year under Sections 48 to 55 in respect of any short-term capital asset is a loss, the assessee shall be entitled to have the amount of such loss set off against the

income, if any, as arrived at under a similar computation made for the assessment year in respect of any other capital asset.

(ii) Where the result of the computation made for any assessment year under Sections 48 to 55 in respect of any capital asset other than a short-term capital asset is a loss, the assessee shall be entitled to have the amount of such loss set off against the income, if any, as arrived at under a similar computation made for the assessment year in respect of any other capital asset not being a short-term capital asset.

71. Set off of loss from one head against income from another.—(1) Where in respect of any assessment year the net result of the computation under any head of income other than 'Capital gains' is a loss and the assessee has no income under the head 'Capital gains', he shall, subject to the provisions of this Chapter, be entitled to have the amount of such loss set off against his income, if any, assessable for that assessment year under any other head.

(2) Where in respect of any assessment year the net result of the computation under any head of income other than "Capital gains" is a loss and the assessee has income assessable under the head "Capital gains", such loss may, subject to the provisions of this Chapter, be set off—

(i) against the income, if any, of the assessee assessable for that assessment year under any head including income assessable under the head "Capital gains" (whether relating to short-term capital assets or any other capital assets), or

(ii) if the assessee so desires, only against his income, if any, under the head "Capital gains", in so far as such income relates to short-term capital assets, and income under any other head.

(3) Where in respect of any assessment year the net result of the computation under Sections 48 to 55 in respect of capital gains relating to short-term capital assets is a loss and the assessee has income assessable under any head of income other than "Capital gains" the assessee shall subject to the provisions of this Chapter, be entitled to have such loss set off against the income aforesaid.

72. Carry forward and set off of business losses.—(1) Where for any assessment year, the net result of the computation under the head "Profits and gains of business or profession" is a loss to the assessee, not being a loss sustained in a speculation business, and such loss cannot be or is not wholly set off against income under any head of income in accordance with the provisions of Section 71, so much of the loss as has not been so set off or, where the assessee has income only under the head 'Capital gains' relating to capital assets other than short-term capital assets and has exercised the option under sub-section (2) of that section or where he has no income under any other head the whole loss shall, subject to the other provisions of this Chapter, be carried to the following assessment year, and

(i) it shall be set off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year:

Provided that the business or profession for which the loss was originally computed continued to be carried on by him in the previous year relevant for that assessment year; and

(ii) if the loss cannot be wholly so set off, the amount of loss not so set off, shall be carried forward to the following assessment year and so on:

Provided that where the whole or any part of such loss is sustained in any such business as is referred to in Section 33B which is discontinued in the circumstances specified in that section, and, thereafter, at any time before the expiry of the period of three years referred to in that section, such business is re-established, reconstructed or revived by the assessee, so much of the loss as is attributable to such business shall be carried forward to the assessment year relevant to the previous year in which the business is so re-established, reconstructed or revived, and—

(a) it shall be set off against the profits and gains, if any, of that business or any other business carried on by him and assessable for that assessment year; and

(b) if the loss cannot be wholly so set off, the amount of loss not so set off shall, in case the business so re-established, reconstructed or revived continues to be carried on by the assessee, be carried forward to the following assessment year and so on for seven assessment years immediately succeeding.

(2) Where any allowance or part thereof is, under sub-section (2) of Section 32 or sub-section (4) of Section 35, to be carried forward, effect shall first be given to the provisions of this section.

(3) No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

73. Losses in speculation business.—(1) Any loss, computed in respect of a speculation business carried on by the assessee, shall not be set off except against profits and gains, if any, of another speculation business.

(2) Where for any assessment year any loss computed in respect of a speculation business has not been wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where assessee had no income from any other speculation business, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

(i) it shall be set off against the profits and gains if any, of any speculation business carried on by him assessable for that assessment year; and

(ii) if the loss cannot be wholly set off, the amount of loss not so set off shall be carried to the following assessment year and so on.

(3) In respect of allowance on account of depreciation or capital expenditure on scientific research, the provisions of sub-section (2) of Section 72 shall apply in relation to speculation business as they apply in relation to any other business.

(4) No loss shall be carried under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

74. Losses under the head “Capital gains”.—(1) (a) Where in respect of any assessment year, the net result of the computation under the head ‘Capital gains’ is a loss, such loss shall, subject to the other provisions of this Chapter, be dealt with as follows:

(i) such portion of the net loss relating to short-term capital assets as cannot be or is not wholly set off against income under any head in accordance with the provisions of Section 71 shall be carried forward to the following assessment year and set off against the capital gains, if any, relating to short-

term capital assets assessable for that assessment year and, if it cannot be so set off, the amount thereof not so set off shall be carried forward to the following assessment year and so on ;

(ii) such portion of the net loss as relates to capital assets other than short-term capital assets shall be carried forward to the following assessment year and set off against the capital gains, if any, relating to capital assets other than short-term capital assets assessable for that assessment year and, if it cannot be so set off, the amount thereof not so set off shall be carried forward to the following assessment year and so on:

Provided that where, in the case of any assessee not being a company, the net loss computed in respect of such capital assets for any assessment year does not exceed five thousand rupees, it shall not be carried forward under this section.

(b) Notwithstanding anything contained in the Indian Income-tax Act, 1922, any loss computed under the head 'Capital gains' in respect of the assessment year commencing on the 1st day of April, 1961, or any earlier assessment year which is carried forward in accordance with the provisions of sub-section (2B) of Section 24 of that Act, shall be dealt with in the assessment year commencing on the 1st day of April, 1962 or any subsequent assessment year as follows

(i) in so far as it relates to short-term capital asset, it shall be carried forward and set off in accordance with the provisions of sub-clause (i) of clause (a) and sub-section (2) ; and

(ii) in so far as it relates to capital assets other than short-term capital assets, it shall be carried forward and set off in accordance with the provisions of sub-clause (ii) of clause (a) and sub-section (2).

(2) (a) No loss referred to in sub-clause (i) of clause (a) of sub-section (1) or sub-clause (i) or sub-clause (ii) of clause (b) of that sub-section shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed under this Act or, as the case may be, the Indian Income-tax Act, 1922 (11 of 1922).

(b) No loss referred to in sub-clause (ii) of clause (a) of sub-section (1) shall be carried forward under this section for more than four assessment years immediately succeeding the assessment year for which the loss was first computed under this Act.

75. Losses of registered firms.—(1) Where the assessee is a registered firm, any loss which cannot be set off against any other income of the firm shall be apportioned between the partners of the firm, and they alone shall be entitled to have the amount of the loss set off and carried forward for set off under Sections 70, 71, 72, 73 and 74.

(2) Nothing contained in sub-section (1) of Section 72, sub-section (2) of Section 73 or sub-section (1) of Section 74 shall entitle any assessee, being a registered firm to have its loss carried forward and set off under the provisions of the aforesaid sections.

76. Losses of unregistered firms assessed as registered firms.—In the case of an unregistered firm assessed under the provisions of clause (b) of Section

183 in respect of any assessment year, its losses for that assessment year shall be dealt with as if it were a registered firm.

77. Losses of unregistered firms of their partners.—(1) Where the assessee is an unregistered firm which has not been assessed as a registered firm under the provisions of clause (b) of Section 183, any loss of the firm shall be set off or carried forward and set off only against the income of the firm.

(2) Where the assessee is a partner of an unregistered firm which has not been assessed as a registered firm under the provisions of clause (b) of Section 183 and his share in the income of the firm is a loss, then, whether the firm has already been assessed or not—

(a) such loss shall not be set off under the provisions of Section 70, Section 71, or sub-section (1) of Section 73 ;

(b) nothing contained in sub-section (1) of Section 72 or sub-section (2) of Section 73 or sub-section (1) of Section 74 shall entitle the assessee to have such loss carried forward and set off against his own income.

78. Carry forward and set off losses in case of change in constitution of firm or on succession.—(1) Where a change has occurred in the constitution of a firm, nothing in this Chapter shall entitle the firm to have carried forward and set off so much of the loss proportionate to the share of a retired or deceased partner computed in accordance with Section 67 as exceeds his share of profits, of the previous year in the firm, or entitle any partner to the benefit of the said loss which is not apportionable to him under Section 67.

(2) Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance nothing in this Chapter shall entitle any person other than the person incurring the loss to have it carried forward and set off against his income.

79. Carry forward and set off of losses in the case of certain companies.—Notwithstanding anything contained in this Chapter, where a change in share-holding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless—

(a) on the last day of the previous year the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred ; or

(b) the Income-tax Officer is satisfied that the change in the share-holding was not effected with a view to avoiding or reducing any liability to tax.

80. Submission of return for losses.—Notwithstanding anything contained in this Chapter, no loss which has not been determined in pursuance of a return filed under Section 139, shall be carried forward and set off under sub-section (1) of Section 72 or sub-section (2) of Section 73 or sub-section (1) of Section 74.

CHAPTER VIA

DEDUCTIONS TO BE MADE IN COMPUTING TOTAL INCOME

A.—General

80A. Deductions to be made in computing total income.—(1) In computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of this Chapter, the deductions specified in Sections 80C to 80U.

(2) The aggregate amount of the deductions under this Chapter shall not, in any case, exceed the gross total income of the assessee.

(3) Where, in computing the total income of a firm, association of persons or body of individuals, any deduction is admissible under Section 80G or Section 80H or Section 80J or Section 80K or Section 80L or Section 80S or Section 80T, no deduction under the same section shall be made in computing the total income of a partner of the firm or, as the case may be, of a member of the association of persons or body of individuals in relation to the share of such partner in the income of the firm or the share of such member in the income of the association or body of individuals.

80B. Definitions.—In this Chapter—

(1) “displaced person” means a person who, on account of the setting up of the Dominions of India and Pakistan, or on account of civil disturbances or the fear of such disturbances in any area now forming part of East Pakistan, has—

(a) in the case of a person having a place of residence in the district of Noakhali or of Comilla, on or after the 1st day of October, 1946, and

(b) in the case of a person having a place or residence in any other area now forming part of East Pakistan, on or after the 1st day of June, 1947,

left, or been displaced from, his place of residence in such area and who has been subsequently residing in India ;

(2) “domestic company” means an Indian company, or any other company which, in respect of its income liable to tax under this Act, has made the prescribed arrangements for the declaration and payment, within India, of the dividends (including dividends on preference shares) payable out of such income ;

(3) (Omitted) ;

(4) “foreign company” means a company which is not a domestic company as defined in clause (2) ;

(5) “gross total income” means the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter or under Section 280-0 and without applying the provisions of Section 64 :

(6) "income", in relation to a handicapped dependant, means the aggregate income of such person from all sources ;

(7) "priority industry" means the business of generation or distribution of electricity or any other form of power or of construction, manufacture or production of any one or more of the articles or things specified in the list in the Sixth Schedule or the business of any hotel where such business is carried on by an Indian company and the hotel is for the time being approved in this behalf by the Central Government ;

(8) "relative", in relation to individual, means—

- (a) the mother, father, husband or wife of the individual, or
- (b) a son, daughter, brother, sister, nephew or niece of the individual, or
- (c) a grand-son or grand-daughter of the individual, or
- (d) the spouse of any person referred to in sub-clause (b) ;

(9) "repatriate" means a person of Indian origin who was ordinarily residing in a foreign country and who, on leaving, or being forced to leave such country, has—

- (a) in the case of a person leaving Mozambique, on or after the 25th day of June, 1962, or
- (b) in the case of a person leaving Burma, on or after the 1st day of June, 1963, or
- (c) in the case of a person leaving Ceylon, on or after the 1st day of November, 1964, or
- (d) in the case of a person leaving any other country, on or after such date or dates as may be notified in this behalf by the Central Government in the Official Gazette,

returned to India with the intention of permanently residing therein.

Explanation.—A person shall be deemed to be of Indian origin if he or either of his parents or any of his grand-parents, was born in undivided India.

B.—Deductions in respect of certain payments

80C. Deduction in respect of life insurance premia, contributions to provident fund, etc.—(1) In computing the total income of an assessee there shall be deducted in accordance with and subject to the provisions of this section, an amount equal to sixty per cent of the first five thousand rupees of the aggregate of the sums specified in sub-section (2) and fifty per cent of the balance, if any of such aggregate.

(2) The sums referred to in sub-section (1) shall be the following, namely—

(a) where the assessee is an individual, any sums paid in the previous year by the assessee out of his income chargeable to tax—

(i) to effect or to keep in force an insurance on the life of the assessee or on the life of the wife or husband or any child of the assessee ; or

~~to effect or to keep in force a contract for a deferred annuity on the life of the assessee or on the life of the wife or husband or any child of~~

the assessee, notwithstanding that such contract contains a provision for the exercise by the insured of an option to receive a cash payment of the annuity ; or

(iii) as a contribution to any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies ;

(iv) as a contribution to any provident fund set up by the Central Government and notified by it in this behalf in the Official Gazette ;

(b) where the assessee is a Hindu undivided family any sums paid in the previous year by the assessee out of its income chargeable to tax to effect or to keep in force an insurance on the life of any member of the family :

Explanation.—For the purposes of sub-clause (i) of clause (a) and clause (b) of this sub-section, an insurance on the life of any person referred to therein shall include—

(i) a policy of insurance on the life of such person securing the payment of a specified sum on the stipulated date of maturity of the policy if such person is alive on such date, notwithstanding that the policy of insurance provides only for the return of premiums paid (with or without any interest thereon) in the event of such person dying before the said stipulated date ;

(ii) a policy of insurance effected by a person for the benefit of a minor with the object of enabling the minor, after he has attained majority, to secure an insurance on his own life by adopting the policy and on his being alive on a date (after such adoption) specified in the policy in this behalf ;

(c) any sum deducted in the previous year from the salary payable by or on behalf of the Government to any individual being a sum deducted in accordance with the conditions of his service, for the purpose of securing to him a deferred annuity or making provision for his wife or children, in so far as the sum so deducted does not exceed one-fifth of the salary ;

(d) if the assessee is an employee participating in a recognised provident fund, his own contributions to his individual account in the fund in the previous year, in so far as the aggregate of such contributions does not exceed one-fifth of his salary in that previous year or eight thousand rupees, whichever is less ;

Explanation.—In clause (d) of this sub-section, “salary” shall have the meaning assigned to it in clause (h) of rule 2 of Part A of the Fourth Schedule ;

(e) if the assessee is an employee participating in an approved superannuation fund, any sum paid in the previous year by him by way of contribution towards the superannuation fund ;

(f) where the assessee is an individual, any sums deposited, in the previous year by the assessee out of his income chargeable to tax in a ten year account or a fifteen year account under the Post Office Savings Bank (Cumulative Time Deposits) Rules, 1959, as amended from time to time.

(3) The provisions of clause (a) and (b) of sub-section (2) shall apply only to so much of any premium or other payment made on a policy other than a contract for a deferred annuity as not in excess of ten per cent of the actual capital sum assured.

Explanation.—In calculating any such capital sum, no account shall be taken—

(i) of the value of any premiums agreed to be returned, or

(ii) of any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person.

(4) The aggregate of the sums referred to in sub-section (2) which qualifies for the purposes of computing the deduction under sub-section (1) shall not exceed—

(i) in the case of an individual being an author, play-wright, artist, musician or actor, such percentage of his gross total income, or such amount, as may be prescribed ;

(ii) in the case of any other individual thirty per cent of his gross total income, or fifteen thousand rupees, whichever is less ;

(iii) in the case of a Hindu undivided family, thirty per cent of its gross total income, or thirty thousand rupees whichever is less.

80D. Deduction in respect of medical treatment, etc., of handicapped dependants.—(1) Where an assessee who is resident in India, being an individual or Hindu undivided family, who has, during the previous year, incurred out of his or its income chargeable to income-tax, any expenditure for the medical treatment (including nursing) of a person who —

(a) is a relative of the individual, or, as the case may be, is a member of the Hindu undivided family and is not dependent on any person other than such individual or Hindu undivided family for his support or maintenance, and

(b) is suffering from a physical or mental disability which is certified by a registered medical practitioner to have the effect of reducing considerably such person's capacity for normal work or engaging in a gainful employment (hereafter in this section referred to as handicapped dependant),

the assessee shall, in accordance with and subject to the provisions of this section, be allowed a deduction of the amount specified in sub-section (2) in the computation of his total income in respect of the previous year.

(2) The deduction under sub-section (1) shall be—

(i) in a case where the handicapped dependant has, for a period of one hundred and eighty-two days or more during the previous year, been admitted in a hospital or a nursing home or a medical institution or in such other institution as may be notified by the Central Government in the Official Gazette to be an institution for the care of handicapped persons and fees and charges for his medical treatment (including nursing) are payable to such hospital or nursing home or medical or other institution, as the case may be, a sum of two thousand four hundred rupees, or

(ii) in any other case, a sum of six hundred rupees,

as reduced, in either case, by an amount equal to the income, if any of the handicapped dependant in respect of the previous year :

Provided that where the assessee has, during the previous year, incurred expenditure on more than one handicapped dependant, the deduction under sub-section (1) shall be allowed only with reference to one such handicapped dependant as may be chosen by the assessee.

80E. Deduction in respect of payment for securing retirement annuities.—

(1) Where, in the case of an assessee, being an individual who is a citizen of India and is resident in India, his share in the income of a registered firm

which renders professional service as chartered accountant, solicitor, lawyer, architect, or such other professional services as may be notified in this behalf by the Central Government in the Official Gazette is chargeable to tax and he has paid out of his income chargeable to tax a premium (by whatever name called) in any previous year under an annuity contract for the time being approved by the Commissioner as having for its main object the provisions for the individual of a life annuity in old age (hereafter in this section referred to as qualifying premium), then the assessee shall, in accordance with and subject to the provisions of this section, be allowed a deduction of the amount of the qualifying premium in the computation of his total income in respect of the previous year :

Provided that the amount which may be so deducted shall not exceed the sum of five thousand rupees, or one-tenth of gross total income, whichever is less.

(2) Subject to sub-section (3) and any rule by the Board in this behalf, the Commissioner shall not approve a contract unless he is satisfied that it does not—

(a) provide for the payment during life of the individual of any sums except sums payable by way of annuity to the individual ; or

(b) provide for the annuity payable to the individual to commence before he attains the age of fifty-eight or after he attains the age of sixty-eight ; or

(c) provide for the payment of any other sums except sums payable by way of annuity to the individual's widow or widower any sums which, in the event of no annuity becoming payable either to the individual or to a widow or widower of the individual, are payable to the individual's legal representative by way of return of premiums, by way of reasonable interest on premiums and by way of bonus out of profit ; or

(d) provide for the payment of annuity, if any payable to a widow or widower of the individual to be of a greater annual amount than that paid or payable to the individual ; or

(e) provide for the payment, of any annuity otherwise than for the life of the annuitant,

and that it does include a provision that no annuity payable under it shall be capable in whole or in part of surrender, commutation or assignment.

(3) The Commissioner may, if he thinks fit, and subject to any conditions the Board may, by rules, prescribe and subject to any conditions he thinks proper to impose, approve a contract, notwithstanding that the contract provides for one or more of the following matters, that is to say,—

(a) for the payment after the individual's death of an annuity to a dependant other than the widow or widower of the individual ;

(b) for the payment to the individual of an annuity commencing before he attains the age of fifty-eight, if the annuity is payable on his becoming incapable through infirmity of mind or body of being actively engaged in his profession or profession of a similar nature for which he is trained or fitted ;

(c) for the annuity payable to any person to continue for a specified term (not exceeding ten years), notwithstanding his death within that term ;

(d) in the case of an annuity which is to continue for such specified term, for the annuity to be assignable by will.

(4) The foregoing provisions of this section shall apply in relation to a contribution (by whatever name called) to a fund approved by the Commissioner as they apply in relation to any premium under an annuity contract so approved, provided the fund satisfies also the conditions set out below and any other conditions which the Board may, by rules, prescribe, namely—

(a) the fund shall be a fund established in India under an irrevocable trust for the benefit of individuals engaged in any profession referred to in sub-section (1);

(b) the fund shall have for its sole purpose the provision of annuities for individuals engaged in such profession on attaining a specified age or on their becoming incapacitated prior to attaining such age, or for the widow, children or dependants of such persons on their death;

(c) all annuities, pensions and other benefits granted from the fund shall be payable only in India.

(5) The Commissioner may, at any time, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the persons by and to whom premiums are payable under any contract for the time being approved under this section, or to the trustees of any fund so approved, withdraw the approval.

(6) Notwithstanding anything contained in sub-sections (1) and (4) no deduction under this section shall be allowed in the case of any individual—

(i) whose gross total income includes income which is chargeable under the head “Interest on securities”, or “Income from house property” or “Capital gains” or any income chargeable under the head “Income from other sources” in so far as it is not immediately derived from personal exertion of the individual, and the aggregate amount of all such income is more than ten thousand rupees; or

(ii) who is entitled to any pension or is participating in any pension or superannuation scheme.

(7) The amount of deduction under this section shall not in any case exceed the amount of the income computed under the head “Profits and gains of business or profession” included in the gross total income.

(8) (Omitted).

(9) Where any payment by way of annuity or otherwise is made by a person to whom premiums or contributions are payable under sub-section (1) or sub-section (4), such person shall, subject to any rules made by the Board in this behalf, deduct from the total amount so paid during any financial year, tax at such rate or rates in force in that year as would be applicable to such amount, if it were the total income and shall pay the amount so deducted to the credit of the Central Government within the prescribed time and in such manner as the Board may direct and the provisions of Section 201 shall, so far as may be, apply to such person if he does not deduct, or after deducting fails to pay, such tax.

(10) Where a deduction under this section is claimed and allowed for any assessment year in respect of any payment, relief shall not be given in respect of it under any other provision of this Act for the same or a later assessment year nor (in the case of a payment under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract.

(11) (a) The Board may, by notification in the Official Gazette, make rules for carrying out the purposes of this section.

(b) In particular and without prejudice to the generality of the foregoing power, such rules may—

(i) prescribe the statements and other information to be submitted along with an application for approval ;

(ii) prescribe the returns, statements, particulars or information which the Income-tax Officer may require from a person by and to whom premiums or contributions are payable under this section ;

(iii) provide for the assessment by way of penalty of any consideration received by an individual for an assignment of, or creation of a charge upon, any annuity or other sum receivable by him under any contract or from any fund approved for the time being under this section ; and

(iv) provide for securing such further control over the approval granted under this section and administration of funds approved under this section as it may deem requisite.

80F. Deduction in respect of educational expenses in certain cases—

(1) Where an individual, being a resident, who is not a citizen of India, has expended any sum in the previous year out of his income chargeable to tax for the full time education of his child wholly or mainly dependent on him and who is not more than twenty-one years of age, at any University, college, school or other educational institution situate in a country outside India, he shall in accordance with and subject to the provisions of this section, be allowed a deduction of the amount specified in sub-section (2) in the computation of his total income.

(2) The amount referred to in sub-section (1) shall be—

(i) in the case of an individual who has one such child, one thousand five hundred rupees ; and

(ii) in the case of an individual who has more than one such child, three thousand rupees.

80G. Deduction in respect of donations to certain funds, charitable institutions etc.—(1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section, an amount equal to,

(a) where the assessee is a Company, fifty per cent and

(b) in the case of any other assessee, fifty-five per cent
of the aggregate of the sums specified in sub-section (2).

(2) The sums referred to in sub-section (1) shall be the following, namely—

(a) any sums paid by the assessee in the previous year as donations to :

(i) the National Defence Fund set up by the Central Government ; or

(ii) the Jawaharlal Nehru Memorial Fund referred to in the Deed of Declaration of Trust adopted by the National Committee at its meeting held on the 17th day of August, 1964 ; or

(iii) the Prime Minister's Drought Relief Fund ; or

(iv) any other fund or any institution to which this section applies ; or

(v) the Government or any local authority, to be utilised for any charitable purpose ;

(b) any sums paid by the assessee in the previous year as donations for the renovation or repair of any such temple, mosque, gurdwara, church or other places as is notified by the Central Government in the Official Gazette to be of historic, archaeological or artistic importance or to be a place of public worship of renown throughout any State or States.

(3) No deduction shall be allowed under sub-section (1) if the aggregate of the sums referred to in sub-section (2) is less than two hundred and fifty rupees.

(4) The deduction under sub-section (1) shall not be allowed in respect of such part of the aggregate of the sums referred to in sub-clause (a) and in clause (b) of sub-section (2) as exceeds ten per cent of the gross total income (as reduced by any portion thereof on which income-tax is not payable under any provision of this Act and by any amount in respect of which the assessee is entitled to a deduction under any other provision of this Chapter), or two hundred thousand rupees, whichever is less :

Provided that where such aggregate includes any sums referred to in clause (b) of sub-section (2) and such aggregate exceeds the limit of two hundred thousand rupees specified in this sub-section then such limit shall be raised to cover that portion of the donation which is equal to the difference between such aggregate and the said limit, so however, that the limit so raised shall not exceed ten per cent of the assessee's gross total income as reduced as aforesaid, or five hundred thousand rupees whichever is less.

(5) This section applies to donations to any institution or fund referred to in sub-clause (iv) of clause (a) of sub-section (2) only if it is established in India for a charitable purpose and if it fulfils the following conditions, namely—

(i) where the institution or fund derives any income such income would not be liable to inclusion in its total income under the provisions of Sections 11 and 12 or clause (22) or clause (22A) of Section 10 ;

(ii) the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose ;

(iii) the institution or fund is not expressed to be for the benefit or any particular religious community or caste ;

(iv) the institution or fund maintains regular accounts of its receipts and expenditure ; and

(v) the institution or fund is either constituted as a public charitable trust or is registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India or under Section 25 of the Companies Act, 1956 (1 of 1956), or is a University established by law, or is any other educational institution recognised by the Government or by a University established by law, or affiliated to any University established by law or is an institution financed wholly or in part by the Government or a local authority.

Explanation 1.—An institution or fund established for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or of women and children

shall not be deemed to be an institution or fund expressed to be for the benefit of a religious community or caste within the meaning of clause (iii) of sub-section (5).

Explanation 2.—For the removal of doubts, it is hereby declared that a deduction to which the assessee is entitled in respect of any donation made to an institution or fund to which sub-section (5) applies shall not be affected merely by reason of the fact that subsequent to the donation any part of the income of the institution or fund has become chargeable to tax due to non-compliance with any of the provisions of Section 11.

Explanation 3.—In this section, “charitable purpose” does not include any purpose the whole or substantially the whole of which is of a religious nature.

C.—Deductions in respect of certain incomes

80H. Deduction in case of new industrial undertakings employing displaced persons etc.—(1) Where the gross total income of any assessee includes any profits and gains derived from any industrial undertaking to which this section applies, there shall be allowed, in accordance with and subject to the provisions of this section, a deduction from such profits and gains of an amount equal to fifty per cent thereof in computing the total income of the assessee; so however, that the amount of the deduction under this section shall not, in any case, exceed one hundred thousand rupees.

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely—

(i) it is not formed by the splitting up, or reconstruction, of a business already in existence;

(ii) it is not formed by the transfer to a new business of a building, machinery or plant previously used for any purpose;

(iii) it has begun or begins to manufacture or produce articles in any part of India at any time within a period of three years next following the 1st day of April, 1967;

(iv) it employs, on every working day throughout the previous year forty or more workers in a manufacturing process (whether carried on with or without the aid of power); and

(v) it employs displaced persons or repatriates or members of the families of displaced persons or repatriates (all such employees being hereinafter, referred to as rehabilitated employees) and the daily average number of rehabilitated employees, as certified by the prescribed authority is not less than sixty per cent of the daily average number of all the persons employed in the undertaking, throughout the previous year.

Explanation 1.—“Member of the family”, in relation to any person who is a displaced person or repatriate, means any member of the family of such person if such member was, before his employment in the undertaking, dependent on such person.

Explanation 2.—“Daily average number”, in relation to rehabilitated employees or, as the case may be, all the persons employed in the undertaking, shall be taken to be the number arrived at by dividing the aggregate of the number of rehabilitated employees or, as the case may be, the total number of persons employed in the undertaking on each working day of a month by the total number of working days in that month.

(3) The provisions of this section shall, in relation to an industrial undertaking, apply to the assessment for the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles, and the nine assessment years immediately succeeding.

80-I. Deduction in respect of profits and gains from priority industries in the case of certain companies.—(1) In the case of a company to which this section applies, where the gross total income includes any profits and gains attributable to any priority industry, there shall be allowed, in accordance with and subject to the provisions of this section, a deduction from such profits and gains of an amount equal to eight per cent thereof, in computing the total income of the company.

(2) This section applies to a domestic company, save in a case where such company is a company which is referred to in Section 108 and has a gross total income of fifty thousand rupees or less.

(3) Where a company to which this section applies is entitled also to the deduction under Section 80H, the deduction under sub-section (1) of this section shall be allowed with reference to the amount of the profits and gains attributable to the priority industry or industries as reduced by the deduction under Section 80H in relation to such profits and gains.

80J. Deduction in respect of profits and gains from newly established industrial undertakings or ships or hotel business in certain cases.—(1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of hotel to which this section applies, shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains (reduced by the aggregate of the deductions, if any, admissible to the assessee under Section 80H and Section 80I) of so much of the amount thereof as does not exceed the amount calculated at the rate of six per cent per annum on the capital employed in the industrial undertaking or ship or business of the hotel, as the case may be, computed in the prescribed manner in respect of the previous year relevant to the assessment year (the amount calculated as aforesaid being hereafter in this section, referred to as the relevant amount of capital employed during the previous year).

(2) The deduction specified in sub-section (1) shall be allowed in computing the total income in respect of the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or to operate its cold storage plant or plants or the ship is first brought into use or the business of the hotel starts functioning (such assessment year being hereafter, in this section, referred to as the initial assessment year) and each of the four assessment years immediately succeeding the initial assessment year ;

Provided that in the case of an assessee, being a co-operative society the provisions of this sub-section shall have effect as if for the word “four assessment years”, the words “six assessment years” had been substituted.

(3) Where the amount of the profits and gains derived from the industrial undertaking or ship or business of the hotel as the case may be, included in the total income (as computed without applying the provisions of Section 64 and before making any deduction under Chapter VIA or Section 280-0) in respect of the previous year relevant to an assessment year commencing on or

after the 1st day of April, 1967 (not being an assessment year prior to the initial assessment year or subsequent to the fourth assessment year as reckoned from the end of the initial assessment year) falls short of the relevant amount of capital employed during the previous year, the amount of such shortfall or, where there are no such profits and gains, an amount equal to the relevant amount of capital employed during the previous year (such amount, in either case, being hereafter, in this section, referred to as deficiency) shall be carried forward and set off against the profits and gains referred to in sub-section (1) [as computed after allowing the deductions if any, admissible under Section 80H, Section 80-I and the sub-section (1)] in respect of the previous year relevant to the next following assessment year and, if there are no such profits and gains for that assessment year, or where the deficiency exceeds such profits and gains, the whole or balance of the deficiency, as the case may be, set off against such profits and gains for the next following assessment year and so far as such deficiency cannot be wholly so set off, it shall be set off against such profits and gains assessable for the next following assessment year and so on :

Provided that—

(i) in no case shall the deficiency or any part thereof be carried forward beyond the seventh assessment year as reckoned from the end of the initial assessment year :

(ii) where there is more than one deficiency and each such deficiency relates to an earlier assessment year, the deficiency which relates to an earlier assessment year shall be set off under this sub-section before setting off the deficiency in relation to a later assessment year :

Provided further that in the case of an assessee being a co-operative society, the provisions of this sub-section shall have effect as if for the words "fourth assessment year", the words "sixth assessment year" had been substituted.

(4) This section applies to any industrial undertaking which fulfils all the following conditions, namely—

(i) it is not formed by the splitting up, or the reconstruction, of a business already in existence ;

(ii) it is not formed by the transfer to a new business of building (not being a building taken on rent or lease), machinery or plant previously used for any purpose ;

(iii) it manufactures or produces articles, or operates one or more cold storage plant or plants, in any part of India, and has begun or begins to manufacture or produce articles or to operate such plant or plants, at any time within the period of twenty-eight years next following the 1st day of April, 1948, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking ;

(iv) in a case where the industrial undertaking manufactures or produced articles, the undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power :

Provided that the condition in clause (i) shall not apply in respect of any industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in Section 33B, in the circumstances and within the period specified in that section.

(5) This section applies to any ship, where all the following conditions are fulfilled, namely—

(i) it is owned by an Indian company and is wholly used for the purposes of the business carried on by it ;

(ii) it was not, previous to the date of its acquisition by Indian company, owned and used in Indian territorial waters by a person resident in India ; and

(iii) it is brought into use by the Indian company at any time within a period of twenty-eight years next following the 1st day of April, 1948.

(6) This section applies to the business of any hotel, where all the following conditions are fulfilled, namely—

(a) the business of the hotel starts functioning on or after the 1st day of April, 1961, and is not formed by the splitting up, or the re-construction, of a business already in existence or by the transfer to a new business of a building previously used as a hotel or of any machinery or plant previously used for any purpose ;

(b) the business of the hotel is owned and carried on by a company registered in India with a paid-up capital of not less than five hundred thousand rupees ;

(c) the hotel has such number and types of guest rooms and provides such amenities as may be prescribed, having regard to the population and the tourist importance of the place in which the hotel is located ; and

(d) the hotel is for the time being approved for the purposes of this sub-section by the Central Government.

Explanation.—Where—

(a) in the case of an industrial undertaking, any building, machinery or plant, or any part thereof previously used for any purpose, or

(b) in the case of the business of a hotel, any building, or any part thereof previously used for any purpose,

is, in either case, transferred to a new business, and the total value of the building, machinery or plant or part so transferred does not exceed twenty per cent of the total value of the building, machinery or plant used in the business, then, for the purposes of clause (ii) of sub-section (4) and clause (a) of sub-section (6), the condition specified therein shall be deemed to have been complied with and the total value of the building, machinery or plant or part so transferred shall not be taken into account in computing the capital employed in the industrial undertaking or the business of the hotel.

(7) The Central Government may, after making such inquiry as it may think fit, direct by notification in the Official Gazette, that the exemption conferred by this section shall not apply to any class of industrial undertakings with effect from such date as it may specify in the notification.

80K. Deduction in respect of dividends attributable to profits and gains from new industrial undertakings or ships or hotel business.—Where the gross total income of an assessee, being the owner of any share or shares in a company, includes any income by way of dividends paid or deemed to have been paid to him by the company in respect of such share or shares there shall, subject to any rules that may be made by the Board in this behalf, be allowed, in computing his total income, a deduction from such income by way of dividends

of an amount equal to such part thereof as is attributable to the profits and gains derived by the company from an industrial undertaking or ship or the business of a hotel, on which no tax is payable by the company under this Act for any assessment year commencing prior to the 1st day of April, 1968, or in respect of which the company is entitled to a deduction under Section 80J.

80L. Deduction in respect of dividends in certain cases.—(1) Where the gross total income of an assessee includes any income by way of dividends from an Indian company or Indian companies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction as specified hereunder, namely—

- (i) in a case where the amount of such dividends does not exceed one thousand rupees, the whole of such amount ;
- (ii) in any other case, one thousand rupees.

(2) In a case where the assessee is entitled also to the deduction under Section 80K, in relation to the whole or any part of the income by way of dividends referred to in sub-section (1), the deduction under sub-section (1) shall be allowed in respect of such income as reduced by the deduction under Section 80K.

80M. Deduction in respect of certain inter-corporate dividends.—(1) Where the gross total income of an assessee being a company includes any income by way of dividends from a domestic company, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such income by way of dividends of an amount equal to—

(a) where the assessee is a foreign company—

- (i) in respect of such income by way of dividends from an Indian company which is not such a company as is referred to in Section 108 and which is mainly engaged in a priority industry 80 per cent of such income ;
- (ii) in respect of such income by way of dividends other than the dividends referred to in sub-clause (i) 65 per cent of such income ;

(b) where the assessee is a domestic company—

- in respect of any such income by way of dividends. 60 per cent of such income.

Explanation.—For the purposes of this section, a company shall be deemed to be mainly engaged in a priority industry if the income attributable to any such industry or industries included in its gross total income for the previous year is not less than fifty-one per cent of such gross total income.

(2) Where a company to which this section applies is entitled also to the deduction under Section 80K or Section 80L, the deduction under sub-section (1) of this section shall be allowed in respect of income by way of dividends referred to therein as reduced by any such income in relation to which the company is entitled to a deduction under Section 80K or Section 80L.

80MM. Deduction in the case of an Indian company in respect of royalties, etc., received from any concern in India—(1) Where the gross total income of an assessee being an Indian company includes any income by way of royalty, commission, fees or any other payment (not being income chargeable under the head "Capital gains") received by it from any person carrying on a business in India in consideration for—

(i) the provision of technical know-how which is likely to assist in the manufacture or processing of goods or materials, or in the installation or erection of machinery or plant for such manufacture or processing or in the working of a mine, oil well or other source of mineral deposits, or in the search for, or discovery or testing of mineral deposits or the winning of access to them, or in carrying out any operation relating to agriculture, animal husbandry, dairy or poultry farming, forestry or fishing, or

(ii) rendering services in connection with the provision of such technical know-how, under an agreement entered into by the assessee with such person on or after the 1st day of April, 1969 and approved by the Central Government in this behalf, there shall be allowed a deduction from such income of an amount equal to forty per cent thereof in computing the total income of the assessee

Provided that the application for such approval is made to the Central Government before the 1st day of October of the relevant assessment year

(2) For the purposes of this section "provision of technical know-how" means,—

(i) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or similar property ;

(ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or similar property ;

(iii) the use of any patent, invention, model, design, secret formula or process or similar property ;

(iv) the imparting of any information concerning industrial, commercial or scientific knowledge, experience or skill.

(3) The provisions of sub-section (1) shall not apply in relation to any income in respect of which the assessee is entitled to the deduction specified in Section 80-O.

80N. Deduction in respect of dividends received from certain foreign companies.—Where shares in a foreign company have been allotted to an assessee being an Indian company in consideration of any patent, invention, model, design, secret formula or process, or similar property right, or information concerning industrial, commercial or scientific knowledge, experience or skill made available or provided or agreed to be made available or provided to the foreign company by the assessee, or in consideration of technical services rendered or agreed to be rendered to the foreign company by the assessee, under an agreement approved by the Central Government in this behalf before the 1st day of October of the relevant assessment year, and any income by way of dividend on such shares is included in the gross total income of the assessee, there shall be allowed a deduction of the whole of such income in computing the total income of the assessee.

80-O. Deduction in respect of royalties, etc., received from certain foreign companies.—Where the gross total income of any assessee being an Indian company includes any income by way of royalty, commission, fees or any similar payment received by it from a foreign company in consideration for the use of any patent, invention, model, design, secret formula or process, or similar property right, or information concerning industrial, commercial or scientific knowledge, experience or skill made available or provided or agreed to be made available or provided to the foreign company by the assessee, or in consideration of technical services rendered or agreed to be rendered to the foreign company by the assessee, under an agreement approved by the Central Government in this behalf before the 1st day of October of the relevant assessment year, there shall be allowed a deduction of the whole of such income in computing the total income of the assessee.

80P. Deduction in respect of income of Co-operative Societies.—(1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2) there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely—

(a) in the case of a co-operative society engaged in—

- (i) carrying on the business of banking or providing credit facilities to its members, or
- (ii) a cottage industry, or
- (iii) the marketing of the agricultural produce of its members, or,
- (iv) the purchase of agricultural implements, seeds, live-stock or other articles intended for agriculture for the purpose of supplying them to its members, or
- (v) the processing, without the aid of power, of the agriculture produce of its members,

the whole of the amount of profits and gains of business attributable to any one or more of such activities ;

(b) in the case of a co-operative society, being a primary society engaged in supplying milk raised by its members to a federal milk co-operative society the whole of the amount of profits and gains of such business ;

(c) in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of, or in addition to all or any of the activities as specified) so much of its profits and gains attributable to such activities as does not exceed twenty thousand rupees ;

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income ;

(e) in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing of facilitating the marketing of commodities, the whole of such income ;

(f) in the case of a co-operative society, not being a housing society or an urban consumers' society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed twenty thousand rupees,

the amount of any income by way of interest on securities chargeable under Section 18 or any income from house property chargeable under Section 22.

Explanation.—For the purposes of this section, an “urban consumers’ co-operative society” means a society for the benefit of the consumers within the limits of a municipal corporation, municipal committee, notified area committee, town area or cantonment.

(3) In a case where the assessee is entitled also to the deduction under Section 80H or Section 80J, the deduction under sub-section (1) of this section, in relation to the sums specified in clause (a) or clause (b) or clause (c) of sub-section (2) shall be allowed with reference to the income, if any, as referred to in those clauses included in the gross total income as reduced by the deductions under Section 80H and Section 80J.

80Q. Deduction in respect of dividends from co-operative society.—

Where the gross total income of an assessee who is a member of a co-operative society includes any income by way of dividend received by him from the society, the whole of such income shall be allowed as a deduction in computing his total income.

80R. Deduction in respect of remuneration from certain foreign sources in the case of professors, teachers, etc.—Where the gross total income of an individual who is a citizen of India includes any remuneration received by him outside India from any University or other educational institution established outside India or such other association or body established outside India as may be notified in this behalf by the Central Government in the Official Gazette, for any service rendered by him during his stay outside India in his capacity as a professor, teacher or research worker in such University, institution, association or body, there shall be allowed a deduction from such remuneration of an amount equal to fifty per cent thereof in computing the total income of the individual :

Provided that where the individual renders continuous service outside India in such University, institution, association or body for a period exceeding thirty-six months, no deduction under this section shall be allowed in respect of the remuneration for such service relating to any period after the expiry of the thirty-six months aforesaid.

80RR. Deduction in respect of professional income from foreign sources in certain cases.—Where the gross total income of an individual resident in India, being an author, playwright, artist, musician or actor includes any income derived by him in the exercise of his profession from the Government of a foreign State or any person not resident in India, and such income is received in, or brought into India by him or on his behalf in accordance with the Foreign Exchange Regulation Act, 1947, and any rules made thereunder, there shall be allowed a deduction from such income of an amount equal to twenty-five per cent of the income so received or brought, in computing the total income of the individual.

80S. Deduction in respect of compensation for termination of managing agency, etc., in the case of assessee, other than companies.—Where the gross total income of an assessee not being a company includes any income by way of compensation or other payment which is chargeable as the profits and gains of business or profession in accordance with the provisions of clause (ii) of

Section 28, there shall be allowed, in computing the total income of the assessee, a deduction from such income of an amount equal to twenty-five per cent thereof, so however, that the amount of the deduction shall not, in any case, exceed one hundred thousand rupees.

80I. Deduction in respect of long-term capital gains in the case of assessee other than companies.—Where the gross total income of an assessee not being a company includes any income chargeable under the head Capital gains relating to capital assets other than short-term capital assets (such income being hereinafter, referred to as long-term capital gains), there shall be allowed, in computing the total income of the assessee, a deduction from such income of an amount equal to,—

(a) in a case where the gross total income does not exceed ten thousand rupees or where the long-term capital gains do not exceed five thousand rupees, the whole of such long-term capital gains,

(b) in any other case, five thousand rupees as increased by a sum equal to—

(i) forty-five per cent of the amount by which the long-term capital gains relating to capital assets, being buildings or lands, or any rights in buildings or lands, exceed five thousand rupees,

(ii) sixty-five per cent of the amount by which the long-term capital gains relating to any other capital assets exceed five thousand rupees

Provided that in a case where the long-term capital gains relate to buildings or lands, or any rights in buildings or lands as well as to other assets, the sum referred to in sub-clause (ii) of clause (b) shall be taken to be—

(A) where the amount of the long-term capital gains relating to the capital assets mentioned in sub-clause (i) is less than five thousand rupees sixty-five per cent of the amount by which the long-term capital gains relating to any other capital assets exceed the difference between five thousand rupees and the amount of the long-term capital gains relating to the capital gains relating to the capital assets mentioned in sub-clause (i) and

(B) where the amount of the long-term capital gains relating to the capital assets mentioned in sub-clause (i) is equal to or more than five thousand rupees, sixty-five per cent of the long-term capital gains relating to any other capital assets.

. D. Other Deductions

80U. Deduction in the case of blind persons.—In computing the total income of an individual, being a resident, who is totally blind as at the end of the previous year, shall be allowed a deduction of a sum of two thousand rupees.

Provided that such individual produces before the Income-tax Officer, in respect of the first assessment year for which deduction is claimed under this section a certificate as to his total blindness from a registered medical practitioner, being an oculist.

CHAPTER VII

INCOMES FORMING PART OF TOTAL INCOME ON WHICH NO INCOME-TAX IS PAYABLE

Sections 81 to 85 (Omitted).

86. Other incomes.—Income-tax shall not be payable by an assessee in respect of the following—

- (i) (Omitted).
- (ii) (Omitted).
- (iii) if the assessee is a partner of an unregistered firm, any portion of the assessee's share in the profits and gains of the firm computed in the manner laid down in Section 67 on which income-tax is payable by the firm ;
- (iv) (Omitted).
- (v) if the assessee is a member of an association of persons, or a body of individuals other than Hindu undivided family, a company or a firm any portion of the amount which he is entitled to receive from the association or body on which income-tax has already been paid by the association or body.

86A. Deduction from tax on certain securities.—Where there is included in the total income of an assessee—

- (i) the interest due on any security of the Central Government issued or declared to be income-tax-free, or
- (ii) the interest due on any security of a State Government issued income-tax-free, the income-tax whereon is payable by the State Government, the assessee shall be entitled to a deduction from the amount of income-tax with which he is chargeable in his total income of an amount equal to the income-tax calculated on the amount so included at the average rate of income-tax or at the rate of twenty-seven and a half per cent, whichever is less.

CHAPTER VIII

RELIEF IN RESPECT OF INCOME-TAX

Sections 87 and 88 (Omitted).

89. Relief when salary, etc. is paid in arrears or in advance.—(1) Where, by reason of any portion of an assessee's salary being paid in advance or by reason of his having received in any one financial year salary for more than twelve months or a payment which under the provisions of clause (3) of Section 17 is a profit in lieu of salary, his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Commissioner may, on an application made in this behalf by the assessee, grant such relief as he considers appropriate.

(2) Where, by reason of any portion of income from interest on securities being received in arrears, an assessee's total income is assessed at a rate higher than that at which it would otherwise have been assessed, the Commissioner may, on an application made in this behalf by the assessee, grant such relief as he considers appropriate.

CHAPTER IX

DOUBLE TAXATION RELIEF

90. Agreement with foreign countries.—The Central Government may enter into an agreement—

(a) with the Government of any country outside India for the granting of relief in respect of income on which have been paid both income-tax under this Act and income-tax in that country, or

(b) with the Government of any country outside India for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country,

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

91. Countries with which no agreement exists.—(1) If any person who is resident in India in any previous year proves that, in respect of his income which accrued or arose during that previous year outside India (and which is not deemed to accrue or arise in India), he has paid in any country with which there is no agreement under Section 90 for the relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower or at the Indian rate of tax if both the rates are equal.

(2) If any person who is resident in India in any previous year proves that in respect of his income which accrued or arose to him during that previous year in Pakistan he has paid in that country, by deduction or otherwise tax payable to the Government under any law for the time being in force in that country relating to taxation of agricultural income, he shall be entitled to a deduction from the Indian income-tax payable by him—

(a) of the amount of the tax paid in Pakistan under any law aforesaid on such income which is liable to tax under this Act also; or

(b) of a sum calculated on that income at the Indian rate of tax, whichever is less.

(3) If the non-resident person is assessed on his share in the income of a registered firm assessed as resident in India in any previous year and such share includes any income accruing or arising outside India during that previous year (and which is not deemed to accrue or arise in India) in a country with which there is no agreement under Section 90 for the relief or avoidance of double taxation and he proves that he has paid income-tax by deduction or otherwise under the law in force in that country in respect of the income so included he shall be entitled to a deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income so included at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

Explanation.—In this section—

(i) the expression “Indian income-tax” means income-tax charged in accordance with the provisions of this Act;

(ii) the expression "Indian rate of tax" means the rate determined by dividing the amount of Indian income-tax after deduction of any relief due under the provisions of this Act but before deduction of any relief under this Chapter by the total income ;

(iii) the expression "rate of tax of the said country" means income-tax and super-tax actually paid in the said country in accordance with the corresponding laws in force in the said country after deduction of all relief due, but before deduction of any relief due in the said country in respect of double taxation, divided by the whole amount of the income as assessed in the said country ;

(iv) the expression "income-tax" in relation to any country includes any excess profits tax or business profits tax charged on the profits by the Government of any part of that country or a local authority in that country.

CHAPTER X

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

92. Income from transaction with non-residents, how computed in certain cases.—Where a business is carried on between a resident and a non-resident and it appears to the Income-tax Officer that, owing to the close connection between them, the course of business is so arranged that the business transacted between them produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the Income-tax Officer shall determine the amount of profits which may reasonably be deemed to have been derived therefrom and include such amount in the total income of the resident.

93. Avoidance of income-tax by transactions resulting in transfer of income to non-residents.—(1) Where there is a transfer of assets by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income becomes payable to a non-resident, the following provisions shall apply—

(a) where any person, by means of any such transfer, either alone or in conjunction with associated operations, acquired any rights by virtue of which he has, within the meaning of this section, power to enjoy, whether forthwith or in the future, any income of a non-resident person which, if it were income of the first-mentioned person, would be chargeable to income-tax, that income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be income of the first-mentioned person for all the purposes of this Act ;

(b) where, whether before or after any such transfer, any such first-mentioned person receives or is entitled to receive any capital sum the payment whereof is in any way connected with transfer or any associated operations, then any income which, by virtue or in consequence of the transfer, either alone or in conjunction with associated operations, has become the income of a non-resident shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be the income of the first-mentioned person for all the purposes of this Act.

Explanation.—The provisions of this sub-section shall apply also in relation to transfer of assets and associated operations carried out before the commencement of this Act.

(2) Where any person has been charged to income-tax on any income deemed to be his under the provisions of this section and that income is subsequently received by him, whether as income or in any other form, it shall not again be deemed to form part of his income for the purpose of this Act.

(3) The provisions of this section shall not apply if the first-mentioned person in sub-section (1) shows to the satisfaction of the Income-tax Officer that—

(a) neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation ; or

(b) the transfer and all associated operations were bonafide commercial transactions and were not designed for the purposes of avoiding liability to taxation.

Explanation.—For the purposes of this section,—

(a) reference to assets representing any assets, income or accumulations of income include references to shares in or obligation of any other person to whom those assets, that income or those accumulations are or have been transferred ;

(b) any body corporate incorporated outside India shall be treated as if it were a non-resident ;

(c) a person shall be deemed to have power to enjoy the income of a non-resident if—

(i) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether in the form of income or not, to ensure for the benefit to the first-mentioned person in sub-section (1), or

(ii) the receipt or accrual of the income operates to increase the value to such first-mentioned person of any assets held by him or for his benefit, or

(iii) such first-mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effect of the associated operations on that income and assets which represent that income, or

(iv) such first-mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or

(v) such first-mentioned person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income ;

(d) in determining whether a person has power to enjoy income, regard shall be had to the substantial result and effect of the transfer and any associated operations ; and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.

(4) (a) “assets” includes property or rights of any kind and “transfer” in relation to rights includes the creation of those rights ;

(b) "associated operation", in relation to any transfer, means an operation of any kind effected by any person in relation to—

- (i) any of the assets transferred, or
- (ii) any assets representing, whether directly or indirectly, any of the such assets transferred, or
- (iii) the income arising from any such assets, or
- (iv) any assets representing, whether directly or indirectly, the accumulations of income arising from any such assets ;
- (c) "benefit" includes a payment of any kind ;
- (d) "capital sum" means—
 - (i) any sum paid or payable by way of a loan or repayment of a loan, and
 - (ii) any other sum paid or payable otherwise than as income, being a sum which is not paid or payable for full consideration in money or money's worth.

94. Avoidance of tax by certain transactions in securities.—(1) Where the owner of any securities [in this sub-section and in sub-section (2) referred to as "the owner"] sells or transfers those securities and buys back or re-acquires the securities, then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this sub-section, be deemed, for all the purposes of this Act, to be income of the owner and not to be the income of any other person.

Explanation.—The references in this sub-section to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so however, that where similar securities are bought or acquired, the owner shall be under no greater liability to income-tax than he would have been under if the original securities had been bought back or re-acquired.

(2) Where any person has at any time during any previous year any beneficial interest in any securities, and the result of any transactions relating to such securities or the income thereof is that, in respect of such securities within such year, either no income is received by him or the income received by him is less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and had been apportioned accordingly, then the income from such securities for such year shall be deemed to be the income of such person.

(3) The provisions of sub-section (1) or sub-section (2) shall not apply if the owner, or the person who has had a beneficial interest in the securities, as the case may be, proves to the satisfaction of the Income-tax Officer—

(a) that there has been no avoidance of income-tax, or

(b) that the avoidance of income-tax was exceptional and not systematic and that was not in his case in any of the three preceding years any avoidance of income-tax by a transaction of the nature referred to in sub-section (1) or sub-section (2).

(4) Where any person carrying on the business which consists wholly or partly in dealing in securities buys or acquires any securities and sells back or re-transfers the securities, then, if the result of the transaction is that interest becoming payable in respect of the securities is receivable by him but is not deemed to be his income by reason of the provisions contained in sub-section (1), no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business.

(5) Sub-section (4) shall have effect, subject to any necessary modifications, as references to selling back or re-transferring the securities included references to selling or transferring similar securities.

(6) The Income-tax Officer may, by notice in writing, require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner or in which he had a beneficial interest at any time during the period specified in the notice, such particulars as considers necessary for the purposes of this section and for the purpose of discovering whether income-tax has been borne in respect of the interest on all those securities.

Explanation.—For the purposes of this section,—

(a) “interest” includes a dividend ;

(b) “securities” includes stock and shares ;

(c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or in the manner in which they can be transferred.

Sections 95 to 103 (Omitted).

CHAPTER XI

ADDITIONAL INCOME-TAX ON UNDISTRIBUTED PROFITS

104. Income-tax on undistributed income of certain companies.—

(1) Subject to the provisions of this section and of Sections 105, 106, 107 and 107A where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company within the twelve months immediately following the expiry of that previous year are less than the statutory percentage of the distributable income of the company of that previous year, the Income-tax Officer shall make an order in writing that the company shall, apart from the sum determined as payable by it on the basis of the assessment under Section 143 or Section 144, be liable to pay income-tax at the rate of—

(a) fifty per cent, in the case of an investment company.

(b) thirty-seven per cent, in the case of a trading company, and

(c) twenty-five per cent, in the case of any other company,

on the distributable income as reduced by the amount of dividends actually distributed, if any.

(2) The Income-tax Officer shall not make an order under sub-section (1) if he is satisfied—

(i) that having regard to the losses incurred by the company in earlier years or to the smallness of the profits made in the previous year, the payment of a dividend or a larger dividend than that declared would be unreasonable ;

(ii) that the payment of a dividend or a larger dividend than that declared would not have resulted in a benefit to the revenue ; or

(iii) that at least seventy-five per cent of the share capital of the company is throughout the previous year beneficially held by an institution or fund established in India for a charitable purpose the income from dividend whereof is exempt under Section 11.

(3) If the Central Government is of opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette and subject to such conditions as may be specified therein, exempt any class of companies to which the provisions of this section apply from the operation of this section.

(4) Without prejudice to the provisions of Section 108, nothing contained in this section shall apply to—

(a) an Indian company whose business consists mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power ;

(b) an Indian company, the value of whose capital assets, being machinery or plant (other than office appliances or road transport vehicles), as shown in his books on the last date of the relevant previous year is fifty lakhs of rupees or more ;

(c) a company which is neither an Indian company nor a company which has made the prescribed arrangements for the declaration and payment of dividends within India.

Explanation.—For the purpose of clause (a) of this sub-section, the business of a company shall be deemed to consist mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power, if the income attributable to any of the aforesaid activities included in its gross total income for the relevant previous year is not less than fifty-one per cent of such total income.

105. Special provision for certain companies.—(1) No order under Section 104 shall be made—

(i) in the case of an investment company which has distributed not less than eighty per cent of its distributable income ; or

(ii) in the case of any other company whose distribution falls short of

the statutory percentage by not more than ten per cent of its distributable income ; or

(iii) in any case where according to the return made by a company under Section 139 it has distributed not less than the statutory percentage of its distributable income, but in the assessment made by the Income-tax Officer under Section 143 or Section 144 a higher total income is arrived at and the difference in the total income does not arise out of the application of the proviso to sub-section (1) of Section 145 or sub-section (2) of Section 145 or Section 144 or the omission by the company to disclose income fully and truly ; or

(iv) in the case of a company where a re-assessment is made under the provisions of clause (b) of Section 147 and the sum distributed as dividends falls short of the statutory percentage of the distributable income determined on the basis of the re-assessment ;

unless the company, on receipt of a notice from the Income-tax Officer that he proposes to make such an order, fails to make within three months of the receipt of such notice, a further distribution of its profits and gains so that, the total distribution made is not less than the statutory percentage of the distributable income.

(2) Any further distribution made under sub-section (1) shall not be taken into account in deciding whether the provisions of Section 104 apply in respect of the previous year in which the further distribution is made.

106. Period of limitation for making orders under Section 104.—No order under Section 104 shall be made after the expiry of four years from the end of the assessment year relevant to the previous year referred to in sub-section (1) of that section or after the expiry of four years from the end of the financial year in which the assessment or re-assessment of the profits and gains of the previous year aforesaid is made, whichever is later :

Provided that the period of limitation prescribed by this section shall not apply in a case where the company has made an application to the Board under Section 107A.

107. Approval of Inspecting Assistant Commissioner for order under Section 104.—Except in cases where a decision is given by the Board under sub-section (4) of Section 107A, no order shall be made by the Income-tax Officer under Section 104 unless the previous approval of the Inspecting Assistant Commissioner has been obtained, and the Inspecting Assistant Commissioner shall not give his approval to any order proposed to be made by the Income-tax Officer until he has given the company concerned an opportunity of being heard.

107A. Reduction of minimum distribution in certain cases.—(1) If any company to which the provisions of Section 104 apply (not being an investment company) considers that, having regard to the current requirements for the development of its business, it would not be possible or advisable for it to declare or pay a dividend of an amount larger than that already declared or paid or proposed to be declared or paid by it, it may make an application to the Board for reduction of the amount of the minimum distribution required under this Chapter.

(2) Every application under sub-section (1) shall be in the prescribed form and shall be verified in the prescribed manner and shall be made within

the period of twelve months referred to in sub-section (1) of Section 104 or where the Income-tax Officer has served on the company a notice under sub-section (1) of Section 105 of his intention to make an order under Section 104, within thirty days of the receipt of such notice.

(3) Every application under sub-section (1) shall be accompanied by a fee of one hundred rupees.

(4) If the Board is satisfied that a distribution equal to the statutory percentage of the distributable income of the company concerned would be unreasonable, it may reduce the amount of minimum distribution required of the company under this Chapter by such amount not exceeding twenty per cent of the statutory percentage of its distributable income, as it may consider fit and further determine the period within which such distribution shall be made.

(5) The Board shall not reject an application made under sub-section (1) without giving the company concerned an opportunity of being heard and its decision shall be final as respects matters concluded by it.

(6) Where an application is made by the company after receipt of a notice from the Income-tax Officer under sub-section (1) of Section 105 and a further distribution is made in accordance with the decision thereon of the Board, such further distribution shall not be taken into account in deciding where the provisions of Section 104 apply, in respect of the previous year in which the further distribution is made.

(7) Where an application is made by a company under this section, the Income-tax Officer shall not make any order under Section 104 until the decision is given by the Board on that application :

Provided that where a company is required to make a distribution or further distribution of its profits and gains in accordance with the decision of the Board and fails to make such distribution or further distribution within the period determined thereunder, the Income-tax Officer shall make an order under Section 104 as if no reduction of the amount of minimum distribution had been made by the Board under this section.

(8) If the Central Government is of opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette, declare that the provision of this section shall not apply to any class of companies or in regard to the whole or any part of the profits and gains of any class of companies.

(9) Notwithstanding anything contained in Section 246, no appeal shall lie to the Appellate Assistant Commissioner against an order of the Income-tax Officer under Section 104 in a case where a decision has been given by the Board.

(10) The Board may, by notification in the Official Gazette, direct that, subject to such conditions, if any, as may be specified in the notification, the powers exercisable by it under this section shall also be exercisable by any Commissioner in respect of such companies or classes of companies as may be specified therein and thereupon in respect of such companies or classes of companies the provisions of this section and Sections 106 and 107 shall have effect as if references in the said sections to the Board were references to such Commissioner.

108. „Savings for company in which public are substantially interested.—Nothing contained in Section 104 shall apply—

- (a) to any company in which the public are substantially interested ; or
- (b) to a subsidiary company of such company if the whole of the share capital of such subsidiary company has been held by the parent company or by its nominees throughout the previous year.

109. “Distributable income”, “Investment company” and “Statutory percentage” defined.—For the purposes of Sections 104, 105 and 107A and this Section,

(i) “distributable income” means the gross total income of a company as reduced by—

(a) the amount of income-tax payable by the company in respect of its total income, but excluding the amount of any income-tax payable under Section 104 ;

(b) the amount of any other tax levied under any law for the time being in force on the company by the Government or by a local authority in excess of the amount, if any, which has been allowed in computing total income ;

(c) any sum with reference to which a deduction of income-tax is allowable to the company under the provisions of Section 80G ;

(d) losses under the head “Capital gains” relating to capital assets other than short-term capital assets ;

(e) income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India ;

Provided that, when the prohibition or restriction is subsequently removed, any reduction allowed under this provision shall be deemed to be a part of the distributable income of the previous year in which the prohibition or restriction is removed ;

(f) in case of a banking company, the amount actually transferred to a reserve fund under Section 17 of the Banking Companies Act, 1949 (10 of 1949) ;

(g) an expenditure actually incurred for the purposes of the business but not deducted in computing the income chargeable under the head “Profits and gains of business or profession” being—

- (1) a bonus or gratuity paid to an employee,
- (2) legal charges,
- (3) any such expenditure as referred to in clause (c) of Section 40,
- (4) any expenditure claimed as a revenue expenditure but not allowed to be deducted as such and not resulting in the creation of an asset or enhancement in the value of an existing asset;

(h) any expenditure wholly and exclusively incurred for the purpose of making or earning any income (other than income chargeable under the head “Profits and gains of business or profession”) included in the gross total income but not allowed to be deducted in computing such income and not resulting in the creation of an asset or enhancement in the value of an existing asset.

(ii) "investment company" means a company whose gross total income consists mainly of income which is chargeable under the heads "interest on securities", "Income from house property", "Capital gains" and "Income from other sources".

(iia) "trading company" means a company whose business consists wholly or mainly in dealing in goods or merchandise manufactured, produced or processed by a person other than that company and whose income attributable to such business included in its gross total income is not less than fifty-one per cent of the amount of such gross total income ;

(iii) "statutory percentage" means—

(1) in the case of an investment company other than an investment company which falls under sub-clause (3) of this clause ... 90%

(2) (Omitted).

(3) in the case of an Indian company (not being an Indian company which falls under the provisions of clause (a) of sub-section (4) of Section 104 a part only of whose total income consists of profits and gains attributable to the business of construction of ships or of manufacture or processing of goods or of mining or of generation or distribution of electricity or any other form of power.

(a) in relation to the profits and gains attributable to such business ... Nil

(b) in relation to the remaining part of its total income—

(1) if it is an investment company or a company which satisfies the conditions specified in sub-clause (4) (a) of this clause ... 90%

(2) in any other case ... 60%

Explanation.—The provision of this Chapter shall, in relation to the remaining part of the gross total income aforesaid, apply as if such part were the gross total income of the company ; and for the purposes of Section 104, the amount of dividends actually distributed shall be deemed to be such proportion thereof as the part aforesaid bears to the total income of the company.

(4) in the case of any other company not referred to in preceding clauses,—

(a) where the accumulated profits and reserves (including depreciation reserves and any amounts capitalised from the earlier reserves) representing accumulations of past profits which have not been the subject of an order under Section 104 or the corresponding provision of the Indian Income-tax Act, 1922 (11 of 1922) exceed—

either

I. the aggregate of—

(i) the paid-up capital of the company exclusive of the capital, if any, created out of its profits and gains which have not been the subject of an order under Section 104, and

(ii) any loan capital which is the property of the shareholders ;

or

II. the value of the fixed assets as shown in the books of the company,
whichever of these is greater 90%

Provided that in the case of such company, not being a trading company,
sub-clause (a) shall have effect as if for the word "exceed", the words "exceed
twice the amount of" were substituted ;

(b) where sub-clause (a) does not apply 60%

(iv) "gross total income" means the total income computed in accord-
ance with the provisions of this Act before making any deduction under
Chapter VIA.

CHAPTER XII

DETERMINATION OF TAX IN CERTAIN SPECIAL CASES

110. Determination of tax where total income includes income on which no tax is payable.—Where there is included in the total income of an assessee any income on which no income-tax is payable under the provisions of this Act, the assessee shall be entitled to a deduction, from the amount of income-tax with which he is chargeable on his total income, of an amount equal to the income-tax calculated at the average rate of income-tax on the amount on which no income-tax is payable.

111. Tax on accumulated balance of recognised provident fund.—(1) Where the accumulated balance due to an employee participating in a recognised provident fund is included in his total income, owing to the provisions of rule 8 of Part A of the Fourth Schedule not being applicable, the Income-tax Officer shall calculate the total of the various sums of tax in accordance with the provisions of sub-rule (1) of rule 9 thereof.

(2) Where the accumulated balance due to an employee participating in a recognised provident fund which is not included in his total income under the provisions of rule 8 of Part A of the Fourth Schedule becomes payable, super-tax shall be calculated in the manner provided in sub-rule (2) of rule 9 thereof.

112. (Omitted).

112A. Tax on interest on National Savings Certificates (First Issue).—Where the total income of an assessee, not being a company, includes any interest on National Savings Certificates (First Issue), the tax payable by him on his total income shall be—

(a) the amount of income-tax payable on the total income as reduced by the amount of such inclusion and by the amount of compensation or other payment referred to in clause (ii) of Section 28 and of the capital gains, if any, had the total income so reduced been his total income ; plus

(b) the amount of income-tax calculated on the amount of such interest included in the total income at the average rate of income-tax which would have been applicable to the total income if the amount of such interest and the amount of compensation or other payment and of the capital gains aforesaid, if any, had not formed part of it.

Explanation 1.—For the purposes of clause (b), the average rate of income-tax shall be calculated as if the total income as reduced in the manner specified in the said clause consisted wholly of earned income as defined in the Finance Act of the relevant year.

Explanation 2.—For the purposes of this section and Section 193, "National Savings Certificates (First Issue)" includes "National Savings Certificates (First Issue)—Bank Series".

113 and 114. (Omitted).

115. Tax on capital gains in case of companies.—Where the total income of a company includes any income chargeable under the head "Capital gains" (whether such gains relate to short-term capital assets or to other capital assets), the income-tax payable by it shall be the aggregate of —

(i) (Omitted).

(ii) the amount of income-tax calculated on the amount of capital gains relating to capital assets other than short-term capital assets included in the total income—

(a) at the rate of forty per cent on so much of the amount of such capital gains as relate to buildings or lands or any rights in buildings or lands ;

and

(b) at the rate of thirty per cent on the balance of such capital gains, if any,

and

(iii) the amount of income-tax with which it would have been chargeable had its total income been reduced by the amount of capital gains referred to in clause (ii).

CHAPTER XIII

INCOME-TAX AUTHORITIES

A.—Appointment and control

116. Income-tax authorities.—There shall be the following classes of income-tax authorities for the purposes of this Act, namely—

(a) the Central Board of Direct Taxes constituted under the Central Board of Revenue Act, 1963,

(b) Directors of Inspections,

- (c) Commissioners of Income-tax and Additional Commissioners of Income-tax,
- (d) Assistant Commissioners of Income-tax who may be either Appellate Assistant Commissioners of Income-tax or Inspecting Assistant Commissioners of Income-tax,
- (e) Income-tax Officers, and
- (f) Inspectors of Income-tax.

117. Appointment of Income-tax authorities.—(1) The Central Government may appoint as many Directors of Inspection, Commissioners of Income-tax, Additional Commissioners of Income-tax, Appellate or Inspecting Assistant Commissioners of income-tax and Income-tax Officers of Class I Service, as it thinks fit.

(2) The Commissioners may, subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, appoint as many Income-tax Officers of Class II Service and as many Inspectors of Income-tax as may be sanctioned by the Central Government.

(3) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, an Income-tax authority may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.

118. Control of Income-tax authorities.—(1) Inspecting Assistant Commissioners shall be subordinate to the Commissioners within whose jurisdiction they perform their functions, and also to the Director of Inspection.

(2) Income-tax Officers shall be subordinate to the Commissioners and the Inspecting Assistant Commissioner within whose jurisdiction they perform their functions and also to the Director of Inspection.

(3) Inspectors of Income-tax shall be subordinate to the Income-tax Officers or other Income-tax authority under whom they are appointed to work and to any other Income-tax authority to whom the said officer or other authority is subordinate.

Explanation.—For the purposes of sub-section (1), “Director of Inspection” does not include a Deputy Director of Inspection or an Assistant Director of Inspection; and for the purposes of sub-section (2), “Director of Inspection” does not include an Assistant Director of Inspection.

119. Instructions to subordinate authorities.—(1) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board :

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioners in the exercise of his appellate functions.

(2) Every Income-tax Officer employed in the execution of this Act shall observe and follow such instructions as may be issued to him for his guidance by the Director of Inspection or by Commissioner or by the Inspecting Assistant Commissioner within whose jurisdiction he performs his functions.

B.—Jurisdiction

120. Jurisdiction of Directors of Inspection.—Directors of Inspection shall perform such functions of any other Income-tax authority as may be assigned to them by Board.

121. Jurisdiction of Commissioners.—(1) Commissioners shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income or of such cases or classes of cases as the Board may direct.

(2) Where any direction issued under sub-section (1) have assigned to two or more Commissioners, the same area or the same persons or classes of persons or the same incomes or classes of income or the same cases or classes of cases, they have concurrent jurisdiction and shall perform such functions in relation to the said area or persons or classes of persons or incomes or classes of income or cases or classes of cases as the Board may, by general or special order in writing, specify, for the distribution and allocation of the work to be performed.

122. Jurisdiction of Appellate Assistant Commissioners.—(1) Appellate Assistant Commissioners shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income as the Board may direct.

(2) Where any directions issued under sub-section (1) have assigned to two or more Appellate Assistant Commissioners, the same area or the same persons or classes of persons or the same incomes or classes of income, they shall perform their functions in accordance with any order which the Board may make for the distribution of the work to be performed.

123. Jurisdiction of Inspecting Assistant Commissioners.—(1) Inspecting Assistant Commissioner shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income or of such cases or classes of cases as the Commissioner may direct.

(2) Where any direction issued under sub-section (1) have assigned to two or more Inspecting Assistant Commissioners, the same area or the same persons or classes of persons or the same incomes or classes of income or the same cases or classes of cases, they shall have concurrent jurisdiction and shall perform such functions in relation to the said area or persons or classes of persons or incomes or classes of income or cases or classes of cases as the Commissioner may, by general or special order in writing, specify, for the distribution and allocation of the work to be performed.

124. Jurisdiction of Income-tax Officers.—(1) Income-tax Officers shall perform their functions in respect of such areas or of such persons or classes of persons or of such incomes or classes of income or of such cases or classes of cases as the Commissioner may direct.

(2) Where any directions issued under sub-section (1) have assigned to two or more Income-tax Officers, the same area or the same persons or classes of persons or the same incomes or classes of income or the same cases or classes of cases, they shall have concurrent jurisdiction and shall perform such functions in relation to the said area or persons or classes of persons or incomes or classes

of income or cases or classes of cases as the Commissioner, or the Inspecting Assistant Commissioner authorised by him in this behalf, may by general or special order in writing, specify, for the distribution and allocation of the work to be performed.

(3) Within the limits of the area assigned to him, the Income-tax Officer shall have jurisdiction—

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.

(4) When a question arises under this section as to whether an Income-tax Officer has jurisdiction to assess any person, the question shall be determined by the Commissioner or where the question is one relating to areas within the jurisdiction of different Commissioners, by the Commissioners concerned or if they are not in agreement, by the Board.

(5) No person shall be entitled to call in question the jurisdiction of an Income-tax Officer—

(a) after the expiry of one month from the date on which he has made a return under sub-section (1) of Section 139 or after the completion of the assessment, whichever is earlier ;

(b) where he has made no such return, after the expiry of the time allowed by the notice under sub-section (2) of Section 139 or under Section 148 for the making of the return.

(6) Subject to the provision of sub-section (5), where an assessee calls in question the jurisdiction of an Income-tax Officer, then, the Income-tax Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (4) before assessment is made.

(7) Notwithstanding anything contained in this section or in Section 130A every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income accruing or received within the area for which he is appointed.

125. Power of Commissioner respecting specified areas, cases, persons, etc.

—(1) The Commissioner may, by general or special order in writing, direct that—

(a) the powers conferred on the Income-tax Officer and the Appellate Assistant Commissioner by or under this Act shall, in respect of any specified case or class of cases or of any specified person or class of persons, be exercised by the Inspecting Assistant Commissioner and the Commissioner respectively ;

(b) such of the functions assigned to the Income-tax Officer by or under this Act, as are specified in any such order may, in respect of any specified area, case or class of cases, person or class of persons or class of incomes, be performed by an Inspector of Income-tax or any member of the ministerial staff, subordinate to the Commissioner or any other Income-tax authority subordinate

to him, and specified in such order, subject to such conditions, restrictions or limitations as may be specified therein :

Provided that the Commissioner shall not unless he is authorised in this behalf by the Board by general or special order in writing, make an order under clause (b) in relation to the functions of an Income-tax Officer mentioned in the following provisions of this Act, namely, Sections 131, 132, 132A, 140A, 143, 144, 146, 147, 148, 162, 171, 172, 174, 175, 176, 177, 178, 183, 184, 185, 189, 221, 222, 226, 228, 253 and 271 to 274, (both inclusive).

(2) For the purposes of any case or person or proceeding under this Act in respect of which or whom an order under sub-section (1) applies—

(a) where such order is made under clause (a) of the said sub-section (1) references in this Act or in any rule made hereunder to the Income-tax Officer and the Appellate Assistant Commissioner shall be deemed to be references to the Inspecting Assistant Commissioner and the Commissioner, respectively, and

(i) any provision of this Act requiring an approval or sanction of the Inspecting Assistant Commissioner shall not apply ;

(ii) any appeal which would otherwise have lain to the Appellate Assistant Commissioner shall lie to the Commissioner ;

(iii) any appeal which would otherwise have lain from an order of the Appellate Assistant Commissioner to the Appellate Tribunal shall lie from the order to the Commissioner ;

(b) where such order is made under clause (b) of the said sub-section (1) references in this Act or in any rule made hereunder to the Income-tax Officer shall be deemed to include references to the Inspector of Income-tax or the member of the ministerial staff specified in such order.

126. Powers of Board respecting specified area, classes of persons or incomes.—Notwithstanding anything contained in the foregoing sections the Board may, by notifications in the Official Gazette, empower Commissioners, Appellate Assistant Commissioners, Inspecting Assistant Commissioners and Income-tax Officers to perform such functions in respect of such area or of such classes of persons or of such classes of income as may be specified in the notification, and thereupon the functions so specified shall cease to be performed in respect of the area or classes of persons or classes of income by the other authorities under Section 121, Section 123 or Section 124.

127. Power to transfer cases.—(1) The Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from any Income-tax Officer or Income-tax Officers, subordinate to him to any other Income-tax Officer or Income-tax Officers also subordinate to him and Board may similarly transfer any case from any Income-tax Officer or Income-tax Officers to any other Income-tax Officer or Income-tax Officers :

Provided that nothing in this sub-section shall be deemed to require any such opportunity to be given where the transfer is from any Income-tax Officer or Income-tax Officers to any other Income-tax Officer or Income-tax Officers

and the offices of all such Income-tax Officers are situated in the same city, locality or place :

Provided further that where any case has been transferred from any Income-tax Officer or Income-tax Officers to two or more Income-tax Officers, the Income-tax Officers to whom the case is so transferred shall have concurrent jurisdiction over the case and shall perform such functions in relation to the said case as the Board or the Commissioner (or any Inspecting Assistant Commissioner authorised by the Commissioner in this behalf) may, by general or special order in writing, specify, for the distribution and allocation of the work to be performed.

(2) The transfer of a case under sub-section (1) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Income-tax Officer or Income-tax Officers from whom the case is transferred.

Explanation.—In this section and in Sections 121, 123, 124 and 125, the word “case”, in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.

128. Function of inspectors of Income-tax.—Inspectors of Income-tax shall perform such functions in the execution of this Act as are assigned to them by the Commissioner by an order, whether, made under clause (b) of sub-section (1) of Section 125 or otherwise, or by any other Income-tax authority under whom they are appointed to work.

129. Change of incumbent of an office.—Whenever in respect of any proceeding under this Act an Income-tax authority ceases jurisdiction and is succeeded by another who has and exercises jurisdiction, the Income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor :

Provided that the assessee concerned may demand that before the proceeding is continued the previous proceeding or any part thereof be re-opened or that before any order of assessment is passed against him, he be re-heard.

130. Commissioner competent to perform any function or functions.—

(1) In respect of any function to be performed by a Commissioner under any provision of this Act in relation to an assessee, the Commissioner referred to therein shall,—

(a) in a case where only one Commissioner has jurisdiction over such assessee, be such Commissioner ;

(b) in a case where two or more Commissioners have concurrent jurisdiction over such assessee, be the Commissioner empowered to perform such function by the Board.

(2) Subject to the provisions of sub-section (1), for the purposes of sections 253, 254, 256, 263 and 264, the Commissioner referred to therein shall, in

relation to an assessee, be the Commissioner having for the time being jurisdiction over the assessee.

130A. Income-tax Officer competent to perform any function or functions.—In respect of any function to be performed by an Income-tax Officer under any provision of this Act in relation to an assessee, the Income-tax Officer referred to therein shall,—

(a) in a case where only one Income-tax Officer has jurisdiction over such assessee, be such Income-tax Officer ;

(b) in a case where two or more Income-tax Officers have concurrent jurisdiction over such assessee, be the Income-tax Officer empowered to perform such function by the Board or, as the case may be, the Income-tax Officer to whom such function has been assigned by an order of the Commissioner or of the Inspecting Assistant Commissioner authorised by the Commissioner in this behalf.

C.—Powers

131. Power regarding discovery, productions of evidence etc.—(1) The Income-tax Officer, Appellate Assistant Commissioner, Inspecting Assistant Commissioner and Commissioner shall for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely—

- (a) discovery and inspection ;
- (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath ;
- (c) compelling the production of books of account and other documents ;
and
- (d) issuing commissions.

(2) Without prejudice to the provisions of any other law for the time being in force, where a person to whom a summon is issued either to attend to give evidence or produce books of account or other documents at a certain place and time, intentionally omits to attend or produce the books of account or documents at the place or time, the Income-tax authority may impose upon him such fine not exceeding five hundred rupees as he thinks fit, and the fine so levied may be recovered in the manner provided in Chapter XVII-D.

(3) Subject to any rules made in this behalf, any authority referred to in sub-section (1) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act :

Provided that an Income-tax Officer shall not—

- (a) impound any books of account or other documents without recording his reason for so doing, or
- (b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Commissioner therefor.

132. Search and seizure.—(1) Where the Director of Inspection or the Commissioner, in consequence of information in his possession, has reason to believe that—

(a) any person to whom a summon under sub-section (1) of Section 37 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (1) of Section 131 of this Act, or a notice under sub-section (4) of Section 22 of the Indian Income-tax Act, 1922 or under sub-section (1) of Section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account, or other documents as required by such summons or notice, or

(b) any person to whom a summon or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act, or

(c) any person who is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

he may authorise any Deputy Director of Inspection, Inspecting Assistant Commissioner, Assistant Director of Inspection or Income-tax Officer (hereinafter referred to as the authorised officer) to—

(i) enter and search any building or place where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept ;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available ;

(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search ;

(iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom ;

(v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

(2) The authorised officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (1) and it shall be the duty of every such officer to comply with such requisition.

(3) The authorised officer may, where it is not practicable to seize any such books of account, other document, money, bullion, jewellery or other valuable article or thing, serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or

otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

(5) Where any money, bullion, jewellery or other valuable article or thing (hereinafter in this section and Section 132A referred to as the assets) is seized under sub-section (1), the Income-tax Officer, after affording a reasonable opportunity to the person concerned for being heard and making such enquiry as may be prescribed, shall, within ninety days of the seizure, make an order, with the previous approval of the Commissioner.—

(i) estimating the undisclosed income (including the income from the undisclosed property) in a summary manner to the best of his judgment on the basis of such materials as are available with him ;

(ii) calculating the amount of tax on the income so estimated in accordance with the provisions of the Indian Income-tax Act, 1922 (11 of 1922), or this Act ;

(iii) specifying the amount that will be required to satisfy any existing liability under this Act and any one or more of the Acts specified in clause (a) of sub-section (1) of Section 230A in respect of which such person is in default or is deemed to be in default ;

and retain in his custody such assets or part thereof as are in his opinion sufficient to satisfy the aggregate of the amounts referred to in clauses (ii) and (iii) and forthwith release the remaining portion, if any, of the assets to the persons from whose custody they were seized :

Provided that if, after taking into account the materials available with him, the Income-tax Officer is of the view that it is not possible to ascertain to which particular previous year or years such income or any part thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part were the total income chargeable to tax at the rates in force in the financial year in which the assets were seized :

Provided further that where a person has paid or made satisfactory arrangements for payment of all the amounts referred to in clauses (ii) and (iii) or any part thereof, the Income-tax Officer may with the previous approval of the Commissioner, release the assets or such part thereof as he may deem fit in the circumstances of the case.

(6) The assets under sub-section (5) may be dealt with in accordance with the provisions of Section 132A.

(7) If the Income-tax Officer is satisfied that the seized assets or any part thereof were held by such person for or on behalf of any other person, the Income-tax Officer may proceed under sub-section (5) against such other person and all the provisions of this section shall apply accordingly.

(8) The books of account or other documents seized under sub-section (1) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Commissioner for such retention is obtained :

Provided that the Commissioner shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (11 of 1922), or this Act in respect of the years for which the books of account or other documents are relevant are completed.

(9) The person from whose custody any books of account or other documents are seized under sub-section (1) may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf.

(10) If a person legally entitled to the books of account or other documents seized under sub-section (1) objects for any reason to the approval given by the Commissioner under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents.

(11) If any person objects for any reason to an order made under sub-section (5), he may, within thirty days of the date of such order, make an application to such authority as may be notified in this behalf by the Central Government in the Official Gazette (hereinafter in this section referred to as the notified authority), stating therein the reasons for such objection and requesting for appropriate relief in the matter.

(12) On receipt of the application under sub-section (10) the Board, or on receipt of the application under sub-section (11) the notified authority, may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.

(13) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1).

(14) The Board may make rules in relation to any search or seizure under this section in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer—

- (i) for obtaining ingress into such building or place to be searched where free ingress thereto is not available ;
- (ii) for ensuring safe custody of any books of account or other documents or assets seized.

Explanation 1.—In computing the period of ninety days for the purposes of sub-section (5), any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

Explanation 2.—In this section, the word “proceeding” means any proceeding in respect of any year, whether under the Indian Income-tax Act, 1922

(11 of 1922), or this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

132A. Application of retained assets.—(1) The assets retained under sub-section (5) of Section 132 may be dealt with in the following manner, namely—

(i) The amount of the existing liability referred to in clause (iii) of the said sub-section and the amount of the liability determined on completion of the regular assessment or reassessment for all assessment years relevant to the previous years to which the income referred to in clause (i) of that sub-section relates, and in respect of which he is in default or is deemed to be in default may be recovered out of such assets.

(ii) If the assets consist solely of money, or partly of money and partly of other assets, the Income-tax Officer may apply such money in the discharge of the liabilities referred to in clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied.

(iii) The assets other than money may also be applied for the discharge of any such liability referred to in clause (i) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the Income-tax Officer under authorisation from the Commissioner under sub-section (5) of Section 226 and the Income-tax Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third schedule.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(3) Any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub-section (1) are discharged shall be forthwith made over or paid to the person from whose custody the assets were seized.

(4) (a) The Central Government shall pay simple interest at the rate of nine per cent per annum on the amount by which the aggregate of money retained under Section 132 and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (iii) of sub-section (5) of that section exceeds the aggregate of the amounts required to meet the liabilities referred to in clause (i) of sub-section (1) of this section.

(b) Such interest shall run from the date immediately following the expiry of the period of six months from the date of the order under sub-section (5) of Section 132 to the date of the regular assessment or reassessment referred to in clause (i) of sub-section (1) or, as the case may be, to the date of last of such assessments or reassessments.

133. Power to call for information.—The Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner may, for the purposes of this Act,—

(1) require any firm to furnish him with a return of the names and addresses of the partners of the firm and their respective shares ;

(2) require any Hindu undivided family to furnish him with a return of the names and addresses of the manager and the members of the family ;

(3) require any person whom he has reason to believe to be a trustee, guardian or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian or agent, and of their addresses ;

(4) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage, or any annuity, not being any annuity taxable under the head "Salaries" amounting to more than four hundred rupees, together with particulars of all such payments made ;

(5) require any dealer, broker or agent or any person concerned in the management of a stock or commodity Exchange to furnish a statement of the names and addresses of all persons to whom he or the Exchange has paid any sum in connection with the transfer, whether by way of sale, exchange or otherwise, of assets, or on whose behalf or from whom he or the Exchange has received any such sum, together with particulars of all such payments and receipts ;

(6) require any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified by the Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner giving information in relation to such points or matters as, in the opinion of the Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner, will be useful for, or relevant to, any proceeding under this Act.

133A. Power of survey.—(1) Notwithstanding anything in any other provision, an Income-tax Officer or any Inspector of Income-tax authorised by him in this behalf may enter—

(a) any place within the limits of the area assigned to him, or

(b) any place occupied by any person in respect of whom the Income-tax Officer exercises jurisdiction,

at which a business or profession is carried on, whether such place be the principal place or not of such business or profession, and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in the carrying on of, such business or profession to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place and on the inspection of such accounts or documents he may, if he so deems necessary, place marks of identification thereon or cause to be made extracts therefrom :

Provided that the Income-tax Officer or such Inspector of Income-tax may enter any place referred to in this section only during such hours as the place is open for the conduct of the business or profession :

Provided further that while acting under this section the Income-tax Officer or such Inspector of Income-tax shall not remove or cause to be removed from the place which he has entered any books of account or other documents.

(2) If a person who under sub-section (1) is required to afford facility to the Income-tax Officer or the Inspector of Income-tax to inspect books of account or other documents either refuses or evades to do so, the Income-tax Officer shall have all the powers under sub-section (1) and (2) of Section 131 for enforcing compliance of the requirement made.

134. Power to inspect registers of companies.—The Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner, or any person subordinate to him authorised in writing in this behalf by the Income-tax Officer, the Appellate Assistant Commissioner or the Inspecting Assistant Commissioner, may inspect, and if necessary, take copies or cause copies to be taken, of any register of the members, debenture holders or mortgagees of any company or of any entry in such register.

135. Power of Director of Inspection, Commissioner and Inspecting Assistant Commissioner.—The Director of Inspection, the Commissioner and the Inspecting Assistant Commissioner shall be competent to make any enquiry under this Act, and for this purpose shall have all the powers that an Income-tax Officer has under this Act in relation to the making of enquires.

136. Proceeding before Income-tax authorities to be judicial proceedings—Any proceeding under this Act before an Income-tax authority shall be deemed to be judicial proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code (45 of 1860).

D.—Disclosure of information

137. (Omitted).

138. Disclosure of information respecting assessee.—(1) (a) The Board or any other Income-tax authority specified by it by a general or special order in this behalf may furnish or cause to be furnished to—

(i) any officer, authority or body performing any functions under any law relating to the imposition of any tax, duty or cess, or to dealings in foreign exchange as defined in Section 2 (d) of the Foreign Exchange Regulation Act, 1947 (7 of 1947); or

(ii) such officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify notification in the Official Gazette in this behalf,

any such information relating to any assessee in respect of any assessment made under this Act or the Indian Income-tax Act, 1922 as may, in the opinion of the Board or other Income-tax authority, be necessary for the purpose of enabling the officer, authority or body to perform his or its functions under that law.

(b) Where a person makes an application to the Commissioner in the prescribed form for any information relating to any assessee in respect of any assessment made under this Act or the Indian Income-tax Act, 1922 on or after the 1st day of April, 1960, the Commissioner may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for in respect of that assessment only and his decision in this behalf shall be final and shall not be called in question in any court of law.

(2) Notwithstanding anything contained in sub-section (1) or any other law for the time being in force, the Central Government may, having regard to the practices and usages customary or any other relevant factors, by orders notified in the Official Gazette, direct that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assesseees or except to such authorities as may be specified in the order.

CHAPTER XIV

PROCEDURE FOR ASSESSMENT

139. Return of income.—(1) Every person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to Income-tax, shall furnish a return of his income or the income of such other person during the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed—

(a) in the case of every person whose total income, or the total income of any other person in respect of which he is assessable, under this Act, includes any income from business or profession, before the expiry of six months from the end of the previous year or where there is more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year, or before the 30th day of June of the assessment year, whichever is later ;

(b) in the case of every other person, before the 30th day of June of the assessment year :

Provided that, on an application made in the prescribed manner, the Income-tax Officer may, in his discretion, extend the date for furnishing the return—

(i) in the case of any person whose total income includes any income from business or profession the previous year in respect of which expired on or before the 31st day of December of the year immediately preceeding the assessment year, and in the case of any person referred to in clause (b), up to a period not extending beyond the 30th day of September of the assessment year without charging any interest ;

(ii) in the case of any person whose total income includes any income from business or profession the previous year in respect of which expired after the 31st day of December of the year immediately preceeding the assessment year, up to the 31st day of December of the assessment year without charging any interest ; and

(iii) up to any period falling beyond the date mentioned in clauses (i) and (ii), in which case, interest at nine per cent per annum shall be payable from

the 1st day of October or the 1st day of January, as the case may be, of the assessment year to the date of the furnishing of the return—

- (a) in the case of a registered firm or an unregistered firm which has been assessed under clause (b) of Section 183, on the amount of tax which would have been payable if the firm had been assessed as an unregistered firm ; and
- (b) in any other case, on the amount of tax payable on the total income as finally assessed, reduced by the advance tax, if any, paid or by any tax deducted at source as the case may be.

(1A) Where as a result of an order under Section 154 or Section 155 or Section 250 or Section 254 or Section 260 or Section 262 or Section 264, the amount of tax on which interest was payable under clause (iii) of the proviso to sub-section (1) has been reduced, the interest shall be reduced accordingly, and the excess interest paid, if any, shall be refunded.

(2) In the case of any person who, in the Income-tax Officer's opinion, is assessable under this Act, whether on his own total income or on the total income of any other person during the previous year, the Income-tax Officer may before the end of relevant assessment year, serve a notice upon him requiring him to furnish, within thirty days from the date of service of the notice, a return of his income or the income of such person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed :

Provided that on an application made in the prescribed manner the Income-tax Officer may, in his discretion extend the date for the furnishing of the return, and when the date for furnishing the return, whether fixed originally or on extension, falls beyond the 30th day of September or, as the case may be, the 31st day of December of the assessment year, the provisions of sub-clause (iii) of the proviso to sub-section (1) shall apply.

(3) If any person who has not been served with a notice under sub-section (2), has sustained a loss in any previous year under the head "Profits and gains of business or profession" or under the head "Capital gains" and claims that the loss or any part thereof should be carried forward under sub-section (1) of Section 72 or sub-section (2) of Section 73, or sub-section (1) of Section 74, he may furnish, within the time allowed under sub-section (1) a return of loss in the prescribed form and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply as if it were a return under sub-section (1).

(4) (a) Any person who has not furnished a return within the time allowed to him under sub-section (1) or sub-section (2) may before the assessment is made, furnish the return for any previous year at any time before the end of the period specified in clause (b) and the provisions of clause (iii) of the proviso to sub-section (1) shall apply in every such case.

(b) The period referred to in clause (a) shall be—

(i) where the return relates to a previous year relevant to any assessment year commencing on the 1st day of April, 1967, four years from the end of such assessment year ;

(ii) where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April, 1968, three years from the end of the assessment year ;

(iii) where the return relates to a previous year relevant to any other assessment year, two years from the end of such assessment year.

(5) If any person having furnished a return under sub-section (1) or sub-section (2), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the assessment is made.

(6) The prescribed form of the returns referred to in sub-sections (1), (2) and (3) shall, in the case of an assessee engaged in business or profession, require him to furnish particulars of the location and style of the principal place where he carries on the business or profession and all the branches thereof, the names and addresses of his partners, if any, in such business or profession and if he is a member of an association or body of individuals, the names of the other members of the association or the body and the extent of the share of the assessee and the shares of all such partners or the members, as the case may be, in the profits of the business or profession and any branches thereof.

(7) No return under sub-section (1) need be furnished by any person for any previous year if he has already furnished a return of income for such year in accordance with the provision of sub-section (2).

(8) Notwithstanding anything contained in clause (iii) of the proviso to sub-section (1), the Income-tax Officer may, in such case and under such circumstances as may be prescribed, reduce or waive the interest payable by any person under any provision of this section.

140. Return by whom to be signed.—The return under Section 139 shall be signed and verified—

(a) in the case of an individual, by the individual himself ; where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf ; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf ;

(b) in the case of a Hindu undivided family, by the Karta and, where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family ;

(c) in the case of a company or local authority, by the principal officer thereof ;

(d) in the case of a firm, by any partner thereof, not being a minor ;

(e) in the case of any other association, by any member of the association or the principal officer thereof ; and

(f) in the case of any other person by that person or by some person competent to act on his behalf.

140A. Self-assessment.—(1) Where a return has been furnished under Section 139 and the tax payable on the basis of that return as reduced by any

tax already paid under any provision of this Act exceeds five hundred rupees, the assessee shall pay the tax so payable within thirty days of furnishing the return.

(2) After a provisional assessment under Section 141 or a regular assessment under Section 143 or Section 144 has been made, any amount paid under sub-section (1) shall be deemed to have been paid towards the provisional assessment or regular assessment, as the case may be.

(3) If any assessee fails to pay the tax or any part thereof in accordance with the provisions of sub-section (1), he shall, unless a provisional assessment under Section 141 or a regular assessment under Section 143 or Section 144 has been made before the expiry of thirty days referred to in that sub-section, be liable, by way of penalty, to pay such amounts as the Income-tax Officer may direct, so however, that the amount of penalty does not exceed fifty per cent of the amount of such tax or part, as the case may be :

Provided that before levying any such penalty, the assessee shall be given a reasonable opportunity of being heard.

141. Provisional assessment.—(1) The Income-tax Officer may, at any time after the receipt of a return made under Section 139, proceed to make, in a summary manner, a provisional assessment of the tax payable by the assessee, on the basis of his return and the accounts and documents, if any, accompanying it.

(2) In making any assessment under this section due effect shall be given to—

- (a) the allowance referred to in sub-section (2) of Section 32, and
- (b) any loss carried forward under sub-section (1) of Section 72 or sub-section (2) of Section 73 or sub-section (1) of Section 74.

(3) A partner of a firm may be assessed under sub-section (1) in respect of his share in the income of the firm, if its return has been received, even if the return of the partner himself has not been received.

(4) A firm may be assessed under sub-section (1) as an unregistered firm, except in the following cases, where it shall be assessed as a registered firm—

(a) where the firm was assessed as a registered firm for the latest assessment year for which its assessment has been completed, and it has before the expiry of the period laid down in Chapter XVI-B filed its application for registration or declaration under sub-section (7) of Section 184 for the assessment year for which the provisional assessment is to be made ;

(b) where no regular assessment has been made on the firm for any assessment year preceding the assessment year for which provisional assessment is to be made, and the firm has, before the expiry of the period laid down in Chapter XVI-B filed its application for registration, or as aforesaid, for the assessment year for which the provisional assessment is to be made.

(5) After a regular assessment has been made, any amount paid or deemed to have been paid towards the provisional assessment made under sub-section (1) shall be deemed to have been paid towards the regular assessment ;

and where the amount paid or deemed to have been paid towards the provisional assessment exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee.

(6) Nothing done or suffered by reason or in consequence of any provisional assessment made under this section shall prejudice the determination, on the merits, of any issue which may arise in the course of the regular assessment.

(7) There shall be no right of appeal against a provisional assessment made under sub-section (1).

141A. Provisional assessment for refund.—(1) Where a return has been furnished under Section 139 and the assessee claims that the tax paid or deemed to have been paid under the provisions of Chapter XVII-B or Chapter XVII-C exceeds the tax payable on the basis of the return and accounts and documents accompanying it, the Income-tax Officer may, if he is of opinion that the regular assessment of the assessee is likely to be delayed, proceed to make, in a summary manner, a provisional assessment of the sum refundable to the assessee, on the basis of such return, accounts and documents.

(2) In making any assessment under this section due effect shall be given to—

(a) the allowance referred to in sub-section (2) of Section 32; and

(b) any loss carried forward under sub-section (1) of Section 72, sub-section (2) of Section 73 or sub-section (1) of Section 74.

(3) A firm may be assessed under sub-section (1) as an unregistered firm, except in the following cases, where it shall be assessed as a registered firm—

(a) where the firm was assessed as a registered firm for the latest assessment year for which its assessment has been completed; and it has before the expiry of the period laid down in Chapter XVI-B filed its application for registration or declaration under sub-section (7) of Section 184 for the assessment year for which the provisional assessment is to be made;

(b) where no regular assessment has been made on the firm for any assessment year preceding the assessment year for which the provisional assessment is to be made, and the firm has, before the expiry of the period laid down in Chapter XVI-B filed its application for registration or declaration as aforesaid, for the assessment year for which the provisional assessment is to be made.

(4) After a regular assessment has been made, any amount refunded on provisional assessment made under sub-section (1) shall be dealt with in the manner specified hereunder, namely—

(a) where the sum refundable on regular assessment is equal to or exceeds the amount refunded under sub-section (1), the amount so refunded shall be deemed to have been refunded towards the regular assessment;

(b) where no refund is due on regular assessment or the amount refunded under sub-section (1) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.

(5) Nothing done or suffered by reason or in consequence of any provisional assessment made under this section shall prejudice the determination, on the merits, of any issue which may arise in the course of the regular assessment.

(6) There shall be no right of appeal against a provisional assessment made under sub-section (1).

142. Enquiry before assessment.—(1) For the purpose of making an assessment under this Act, the Income-tax Officer may serve on any person who has made a return under Section 139 or upon whom a notice has been served under sub-section (2) of Section 139 (whether a return has been made or not) a notice requiring him, on a date to be therein specified,—

(i) to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require, or

(ii) to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including statement of all assets and liabilities of the assessee, whether included in the accounts or not) as the Income-tax Officer may require :

Provided that—

(a) the previous approval of the Inspecting Assistant Commissioner shall be obtained before requiring the assessee to furnish a statement of all assets and liabilities not included in the accounts ;

(b) the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

(2) For the purpose of obtaining full information in respect of the income or loss of any person the Income-tax Officer may make such enquiry as he considers necessary.

(3) The assessee shall, except where the assessment is made under Section 144, be given an opportunity of being heard in respect of any material gathered on the basis of any enquiry under sub-section (2) and proposed to be utilised for the purpose of the assessment.

143. Assessment.—(1) Where a return has been made under Section 139 and the Income-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that the return is correct and complete, he shall assess the total income or loss of the assessee, and shall determine the sum payable by him or refundable to him on the basis of such return.

(2) Where a return has been made under Section 139 but the Income-tax Officer is not satisfied without requiring the presence of the assessee or the production of evidence that the return is correct and complete, he shall serve on the assessee a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which the assessee may rely in support of the return.

(3) On the day specified in the notice issued under sub-section (2), or soon afterward as may be, the Income-tax Officer, after hearing such evidence as the assessee may produce and such other evidence as the Income-tax Officer may require on specified points, and after taking into account all relevant material which the Income-tax Officer has gathered, shall, by an order in writing, assess

the total income or loss of the assessee, and determine the sum payable by him or refundable to him on the basis of such assessment.

144. Best judgment assessment.—If any person—

- (a) fails to make the return required by any notice given under sub-section (2) of Section 139 and has not made a return or revised return under sub-section (4) or sub-section (5) of that section, or
- (b) fails to comply with all the terms of a notice issued under sub-section (1) of Section 142, or
- (c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of Section 143,

the Income-tax Officer, after taking into account all relevant material which the Income-tax Officer has gathered, shall make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee or refundable to the assessee on the basis of such assessment.

145. Method of accounting.—(1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall be computed in accordance with the method of accounting regularly employed by the assessee :

Provided that in any case where the accounts are correct and complete to the satisfaction of the Income-tax Officer but the method employed is such that, in the opinion of the Income-tax Officer, the income cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

(2) Where the Income-tax Officer is not satisfied about the correctness or the completeness of the accounts of the assessee, or where no method of accounting has been regularly employed by the assessee, the Income-tax Officer may make an assessment in the manner provided in Section 144.

146. Reopening of assessment at the instance of the assessee.—Where an assessee assessed under Section 144 makes an application to the Income-tax Officer, within one month from the date of service of a notice of demand issued in consequence of the assessment, for the cancellation of the assessment on the ground—

- (i) that he was prevented by sufficient cause from making the return required under sub-section (2) of Section 139, or
- (ii) that he did not receive the notice issued under sub-section (1) of Section 142 or sub-section (2) of Section 143, or
- (iii) that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of any notice referred to in clause (ii),

the Income-tax Officer shall, if satisfied about the existence of such ground, cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of Section 143 or Section 144.

147. Income escaping assessment.—If—

(a) the Income-tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under Section

139 for any assessment year to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year,

he may, subject to the provisions of Sections 148 to 153 assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in Sections 148 to 153 referred to as the relevant assessment year).

Explanation 1.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely—

- (a) where income chargeable to tax has been underassessed ; or
- (b) where such income has been assessed at too low a rate ; or
- (c) where such income has been made the subject of excessive relief under this Act, or under the Indian Income-tax Act, 1922 (11 of 1922), or
- (d) where excessive loss or depreciation allowance has been computed.

Explanation 2.—Production before the Income-tax Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure within the meaning of this section.

148. Issue of notice where income has escaped assessment.—(1) Before making the assessment, reassessment, or recomputation under Section 147, the Income-tax Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 139, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were issued under that sub-section.

(2) The Income-tax Officer shall, before issuing any notice under this section, record his reason for doing so.

149. Time limit for notice.—(1) No notice under Section 148 shall be issued,—

(a) in cases falling under clause (a) of Section 147—

(i) for the relevant assessment year, if eight years have elapsed from the end of that year, unless the case falls under sub-clause (ii) ;

(ii) for the relevant assessment year where, eight years, but not more than sixteen years, have elapsed from the end of that year unless the income chargeable to tax which escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year.

(b) in cases falling under clause (b) of Section 147, at any time after the expiry of four years from the end of the relevant assessment year.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of Section 151.

(3) If the persons on whom a notice under Section 148 is to be served is a person treated as the agent of a non-resident under Section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of two years from the end of the relevant assessment year.

150. Provisions for cases where assessment is in pursuance of an order on appeal, etc.—(1) Notwithstanding anything contained in Section 149, the notice under Section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceedings under this Act by way of appeal, reference or revision.

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment or reassessment or recomputation may be taken.

151. Sanction for issue of notice.—(1) No notice shall be issued under Section 148 after the expiry of eight years from the end of the relevant assessment year, unless the Board is satisfied on the reasons recorded by the Income-tax Officer that it is a fit case for the issue of such notice.

(2) No notice shall be issued under Section 148 after the expiry of four years from the end of the relevant assessment year, unless the Commissioner is satisfied on the reasons recorded by the Income-tax Officer that it is a fit case for the issue of such notice.

152. Other provisions.—(1) In an assessment, reassessment or recomputation made under Section 147, the tax shall be chargeable at the rates at which it would have been charged had the income not escaped assessment.

(2) Where an assessment is reopened in circumstances falling under clause (b) of Section 147, the assessee may, if he has not impugned any part of the original assessment order* for that year either under Sections 246 to 248 or under Section 264, claim that the proceedings under Section 147 shall be dropped on his showing that he had been assessed on an amount or to a sum not lower than what he would be rightly liable for even if the income alleged to have escaped assessment had been taken into account, or the assessment or computation had been properly made :

Provided that in so doing he shall not be entitled to reopen matters concluded by an order under Section 154, 155, 260, 262 or 263.

153. Time limit for completion of assessments and re-assessments—
(1) No order of assessment shall be made under Section 143 or Section 144 at any time after—

(a) the expiry of—

(i) four years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or before the 1st day of April, 1967 ;

(ii) three years from the end of the assessment year in which the income was first assessable, where such assessment year is the assessment year commencing on the 1st day of April, 1968 ;

(iii) two years from the end of the assessment year in which the income was first assessable, where such assessment year is an assessment year commencing on or after the 1st day of April, 1969 ; or

(b) the expiry of eight years from the end of the assessment year in which the income was assessable, in a case falling within clause (c) of sub-section (1) of Section 271 ; or

(c) the expiry of one year from the date of filing of a return or a revised return under sub-section (4) or sub-section (5) of Section 139, whichever is latest.

(2) No order of assessment, reassessment or recomputation shall be made under Section 147—

(a) where the assessment, reassessment or recomputation is to be made under clause (a) of that section after the expiry of four years from the end of the assessment year in which the notice under Section 148 was served ;

(b) where the assessment, reassessment or recomputation is to be made under clause (b) of that section after—

(i) the expiry of four years from the end of the assessment year in which the income was first assessable, or

(ii) the expiry of one year from the date of service of the notice under Section 148,

whichever is later.

(3) The provisions of sub-sections (1) and (2) shall not apply to the following classes of assessments, reassessments and recomputations which may be completed at any time—

(i) where a fresh assessment is made under Section 146 ;

(ii) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under Sections 250, 254, 260, 262, 263, or 264 ; or reference under this Act ;

(iii) where in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under Section 147.

Explanation 1.—In computing the period of limitation for the purposes of this section, the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to Section 129 or any period during which the assessment proceeding is stayed by an order or injunction of any court, shall be excluded.

Explanation 2.—Where, by an order referred to in clause (ii) of sub-section (3), any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of Section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order.

Explanation 3.—Where, by an order referred to in clause (ii) of sub-section (3), any income is excluded from the total income of one person and held to be the income of another person, then an assessment of such income on such other person shall, for the purposes of Section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, provided such other person was given an opportunity of being heard before the said order was passed.

154. Rectification of mistake.—(1) With a view to rectifying any mistake apparent from the record—

(a) the Income-tax Officer may amend any order of assessment or of refund or any other order passed by him ;

(b) the Appellate Assistant Commissioner may amend any order passed by him in appeal under Section 250 or Section 271 ;

(bb) the Inspecting Assistant Commissioner may amend any order passed by him in any proceeding under sub-section (2) of Section 274 ;

(c) the Commissioner may amend any order passed by him in revision under Section 263 or Section 264.

(1A) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(2) Subject to the other provisions of this section, the authority concerned—

(a) may make an amendment under sub-section (1) of its own motion,
and

(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, and where the authority concerned is the Appellate Assistant Commissioner, by the Income-tax Officer also.

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(4) Where an amendment is made under this section an order shall be passed in writing by the Income-tax authority concerned.

(5) Subject to the provisions of Section 241, where any such amendment has the effect of reducing the assessment the Income-tax Officer shall make any refund which may be due to such assessee.

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under Section 156 and the provisions of this Act shall apply accordingly.

(7) Save as otherwise provided in Section 155 or sub-section (4) of Section 186 no amendment under this section shall be made after the expiry of four years from the date of the order sought to be amended.

155. Other amendments.—(1) Where in respect of any completed assessment of a partner in a firm, it is found—

- (a) on the assessment or reassessment of the firm, or
- (b) on any reduction or enhancement made in the income of the firm under this section, Section 154, Section 250, Section 254, Section 260, Section 262, Section 263, or Section 264,

that the share of the partner in the income of the firm has not been included in the assessment of the partner or, if included, is not correct, the Income-tax Officer may amend the order of assessment of the partner with a view to the inclusion of the share in the assessment or the correction thereof, as the case may be; and the provisions of Section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the final order passed in the case of the firm.

(2) Where in respect of any completed assessment of a member of an association of persons or of a body of individuals it is found—

- (a) on the assessment or reassessment of the association or body, or
- (b) on any reduction or enhancement made in the income of the association or body under this section, Section 154, Section 250, Section 254, Section 260, Section 262, Section 263 or Section 264,

that the share of the member in the income of the association or body, as the case may be, has not been included in the assessment of the member, or, if included, is not correct, the Income-tax Officer may amend the order of assessment of the member with a view to the inclusion of the share in the assessment or the correction thereof, as the case may be; and the provisions of the Section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the final order passed in the case of the association or body, as the case may be.

(3) Where the excess profits tax or the business profits tax payable by an assessee has been modified in appeal, revision or any other proceedings, or where any excess profit tax has been assessed after the completion of the corresponding assessment for Income-tax and in consequence thereof, it is necessary to amend the total income of the assessee chargeable to Income-tax, the Income-tax Officer may make the necessary amendment and the provisions

of Section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the order making or modifying the assessment of such excess profit tax or business profits tax, as the case may be.

Explanation.—For the purpose of this sub-section, where the assessee is a firm, the provisions of sub-section (1) shall also apply as they apply to the amendment of the assessment of the partners of the firm.

(4) Where as a result of proceedings initiated under Section 147, a loss or depreciation has been recomputed and in consequence thereof it is necessary to recompute the total income of the assessee for the succeeding year or years, to which the loss or depreciation allowance has been carried forward and set off under the provisions of sub-section (1) of Section 72, or sub-section (2) of Section 73, or sub-section (1) of Section 74, the Income-tax Officer may proceed to recompute the total income in respect of such year or years and make the necessary amendment; and the provisions of Section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the order passed under Section 147.

(5) Where an allowance by way of development rebate has been made wholly or partly to an assessee in respect of a ship, machinery or plant installed after the 31st day of December, 1957, in any assessment year under Section 33 or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), and subsequently—

(i) at any time before the expiry of eight years from the end of the previous year in which the ship was acquired or the machinery or plant was installed, the ship, machinery or plant is sold or otherwise transferred by the assessee to any person other than the Government, a local authority, a corporation established by a Central State or Provincial Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956) or in connection with any amalgamation or succession referred to in sub-section (3) or sub-section (4) of Section 33; or

(ii) at any time before the expiry of the eight years referred to in sub-section (3) of Section 34, the assessee utilises the amount credited to the reserve account under clause (a) of that sub-section—

(a) for distribution by way of dividends or profits, or

(b) for remittance outside India as profits or for the creation of any asset outside India; or

(c) for any other purposes which is not a purpose of the business of the undertaking;

the development rebate originally allowed shall be deemed to have been wrongly allowed, and the Income-tax Officer may, notwithstanding anything contained in this Act, recompute the total income of the assessee for the relevant previous year and make the necessary amendment; and the provisions of Section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the sale or transfer took place or the money was utilised.

(5A) Where an allowance by way of development allowance has been made wholly or partly to an assessee in respect of the cost of planting in any area in any assessment year under Section 33A and subsequently—

(i) at any time before the expiry of eight years from the end of the previous year in which such allowance was made, the land is sold or otherwise transferred by the assessee to any person other than the Government, a local authority, a corporation established by a Central, State or Provincial Act or a Government company as defined in Section 617 of the Companies Act, 1956, (1 of 1956) or in connection with any amalgamation or succession referred to in sub-section (5) or sub-section (6) of Section 33A ; or

(ii) at any time before the expiry of the eight years referred to in sub-section (3) of Section 33A, the assessee utilises the amount credited to the reserve account under clause (ii) of that sub-section—

(a) for distribution by way of dividends or profits ; or

(b) for remittance outside India as profits or for the creation of any asset outside India ; or

(c) for any other purposes which is not a purpose of the business of the undertaking ;

the development allowance originally allowed shall be deemed to have been wrongly allowed, and the Income-tax Officer may, notwithstanding anything contained in this Act, recompute the total income of the assessee for the relevant previous year and make the necessary amendment ; and the provisions of Section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the sale or transfer took place or the money was so utilised.

(6) Where any such debt or part of debt as is referred to in clause (vii) of sub-section (1) of Section 36 is written off as irrecoverable in the accounts of the assessee for a previous year and the Income-tax Officer is satisfied that such debt or part thereof became a bad debt in an earlier previous year not falling beyond a period of four previous year immediately preceding the previous year in which the debt or part is written off, the Income-tax Officer may, notwithstanding anything contained in this Act, allow such debt or part as a deduction for such earlier previous years, if the assessee accepts such finding of the Income-tax Officer, and recompute the total income of the assessee for such earlier previous year and make the necessary amendment, and the provisions of Section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the financial year in which the assessment relating to the previous year in which the debt is written off is made.

(7) Where as a result of any proceeding under this Act, in the assessment for any year of a company in whose case an order under Section 104 has been made for that year, it is necessary to recompute the distributable income of that company, the Income-tax Officer may proceed to recompute the distributable income and determine the tax payable on the basis of such recomputation and make the necessary amendment, and the provisions of Section 154 shall, as far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the final order passed in the case of the company in respect of that proceeding.

(8) Where in the assessment for any year a capital gain arising from the transfer of any such capital asset as is referred to in Section 54 is charged to tax and within a period of one year after the date of the transfer the assessee purchases, or within two years from that date constructs, a house property for the purpose of his own residence, the Income-tax Officer shall amend the order of assessment so as to exclude the amount of the capital gain not chargeable to tax under the provisions of Section 54, and the provisions of Section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the date of the assessment.

156. Notice of demand.—When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Income-tax Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable.

157. Intimation of losses.—When, in the course of the assessment of the total income of any assessee, it is established that a loss has taken place which the assessee is entitled to have carried forward and set off under the provisions of sub-section (1) of Section 72, sub-section (2) of Section 73 or sub-section (1) of Section 74, the Income-tax Officer shall notify to the assessee by an order in writing the amount of the loss as computed by him for the purposes of sub-section (1) of Section 72, sub-section (2) of Section 73 or sub-section (1) of Section 74.

158. Intimation of assessment of firm.—Whenever a registered firm is assessed, or an unregistered firm is assessed under the provisions of clause (b) of Section 183, the Income-tax Officer shall notify to the firm by an order in writing the amount of its total income assessed and the apportionment thereof between the several partners.

CHAPTER XV

LIABILITY IN SPECIAL CASES

A.—Legal representatives

159. Legal representatives.—(1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under Section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued

against the legal representative from the stage at which it stood on the date of the death of deceased ;

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative ; and

(c) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(5) The provisions of sub-section (2) of Section 161, Section 162 and Section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability.

B.—Representative assessee—General Provisions

160. Representative assessee.—(1) For the purposes of this Act, "representative assessee" means—

(i) in respect of the income of a non-resident specified in clause (i) of sub-section (1) of Section 9, the agent of the non-resident, including a person who is treated as an agent under Section 163 ;

(ii) in respect of the income of a minor, lunatic or idiot, the guardian or manager who is entitled to receive or is in receipt of such income on behalf of such minor, lunatic or idiot ;

(iii) in respect of income which the Court of Wards, the Administrator-General, the Official Trustee or any receiver or manager (including any person, whatever his designation, who in fact manages property on behalf of another) appointed by or under any order of a court, receives or is entitled to receive, on behalf or for the benefit of any person, such Court of Wards, Administrator-General, Official Trustee, receiver or manager ;

(iv) in respect of income which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise [including any Wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913)], receives or is entitled to receive on behalf or, for the benefit of any person, such trustee or trustees.

(2) Every representative assessee shall be deemed to be an assessee for the purposes of this Act.

161. Liability of representative assessee.—(1) Every representative assessee, as regards the income in respect of which he is a representative

assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

(2) Where any person is, in respect of any income, assessable under this Chapter in the capacity of a representative assessee, he shall not, in respect of that income, be assessed under any other provision of this Act.

162. Right of representative assessee to recover tax paid.—(1) Every representative assessee who, as such, pays any sum under this Act, shall be entitled to recover the sum so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the sum so paid.

(2) Any representative assessee, or any person who apprehends that he may be assessed as a representative assessee, may retain out of any money payable by him to the person on whose behalf he is liable to pay tax (hereafter in this section referred to as the principal), a sum equal to his estimated liability under this Chapter, and in the event of any disagreement between the principal and such representative assessee or person as to the amount to be so retained, such representative assessee or person may secure from the Income-tax Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount.

(3) The amount recoverable from such representative assessee or person at the time of final settlement shall not exceed the amount specified in such certificate, except to the extent to which such representative assessee or person may at such time have in his hands additional assets of the principal.

C.—Representative assessee—Special cases

163. Who may be regarded as agent.—(1) For the purposes of this Act, "agent" in relation to a non-resident, includes any person in India—

- (a) who is employed by or on behalf of the non-resident; or
- (b) who has any business connection with the non-resident; or
- (c) from or through whom the non-resident is in receipt of any income whether directly or indirectly; or
- (d) who is the trustee of the non-resident;

and includes also any other person who, whether a resident or non-resident, has acquired by means of a transfer, a capital asset in India :

Provided that a broker in India who in respect of any transaction, does not deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker shall not be deemed to be an agent under this section in respect of such transactions, if the following conditions are fulfilled, namely—

- (i) the transactions are carried on in the ordinary course of business through the first-mentioned broker; and
 - (ii) the non-resident broker is carrying on such transactions in the ordinary course of his business and not as a principal.
- (2) No person shall be treated as the agent of a non-resident unless he had an opportunity of being heard by the Income-tax Officer as to his liability to be treated as such.

164. Charge of tax where share of beneficiaries unknown.—Where any income in respect of which the persons mentioned in clauses (iii) and (iv) of sub-section (1) of Section 160 are liable as representative assessee or any part thereof, is not specifically receivable on behalf or for the benefit of any one person, or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable (which persons are hereinafter in this section referred to as the beneficiaries) the indeterminate or unknown, tax shall be charged as if such income or such part thereof were the total income of an association, or, persons, or, where such income or such part thereof is actually received by a beneficiary, then at the rate or rates applicable to the total income of the beneficiary if such course would result in benefit to the revenue.

165. Case where part of trust income is chargeable.—Where part only of the income of a trust is chargeable under this Act, that proportion only of the income receivable by a beneficiary from the trust which the part so chargeable bears to the whole income of the trust shall be deemed to have been derived from that part.

D.—Representative assessee—Miscellaneous provisions

166. Direct assessment or recovery not barred.—Nothing in the foregoing section in this Chapter shall prevent either the direct assessment of the person on whose behalf or for whose benefit income therein referred to is receivable, or the recovery from such person of the tax payable in respect of such income.

167. Remedies against property in cases of representative assessee.—The Income-tax Officer shall have the same remedies against all property of any kind vested in or under the control or management of any representative assessee as he would have against the property of any person liable to pay any tax, and in as full and ample a manner, whether the demand is raised against the representative assessee or against the beneficiary direct.

E.—Executors

168. Executors.—(1) Subject as hereinafter provided the income of the estate of a deceased person shall be chargeable to tax in the hands of the executor,—

- (a) if there is only one executor, then, as if the executor were an individual; or
- (b) if there are more executors than one, then, as if the executors were an association of persons;

and for the purposes of this Act, the executor shall be deemed to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took place.

(2) The assessment of an executor under this section shall be made separately from an assessment that may be made on him in respect of his own income.

(3) Separate assessment shall be made under this section on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests.

(4) In computing the total income of any previous year under this section, any income of the estate of that previous year distributed to, or applied to the benefit of, any specific legatee of the estate during that previous year shall be excluded; but the income so excluded shall be included in the total income of the previous year of such specific legatee.

Explanation.—In this section, “executor” includes an administrator or other person administering the estate of a deceased person.

169. Right of executor to recover tax paid.—The provisions of Section 162 shall, so far as may be, apply in the case of an executor in respect of tax paid or payable by him as they apply in the case of a representative assessee.

F.—Succession to business or profession

170. Succession to business otherwise than on death.—(1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession,—

(a) the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession;

(b) the successor shall be assessed in respect of the income of the previous year after the date of succession.

(2) Notwithstanding anything contained in sub-section (1), when the predecessor cannot be found, the assessment of the income of the previous year in which the succession took place up to the date of succession and of the previous year preceeding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor and all the provisions of this Act shall, so far as may be, apply accordingly.

(3) When any sum payable under this section in respect of the income of such business or profession for the previous year in which the succession took place up to the date of succession or for the previous year preceeding that year, assessed on the predecessor, cannot be recovered from him, the Income-tax Officer shall record a finding to that effect and the sum payable by the predecessor shall thereafter be payable by and recoverable from the successor, and the successor shall be entitled to recover from the predecessor any sum so paid.

(4) Where any business or profession carried on by a Hindu undivided family is succeeded to, and simultaneously with the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the income of the

business or profession succeeded to, up to the date of succession, shall be assessed and recovered in the manner provided in Section 171, but without prejudice to the provisions of this section.

Explanation.—For the purposes of this section, “income” includes any gain accruing from the transfer, in any manner whatsoever, of the business or profession as a result of the succession.

G.—Partition

171. Assessment after partition of a Hindu undivided family.—(1) A Hindu family hitherto assessed as undivided shall be deemed for the purposes of this Act to continue to be a Hindu undivided family, except where and in so far as a finding of partition has been given under this section in respect of the Hindu undivided family.

(2) Where, at the time of making an assessment under Section 143 or Section 144 it is claimed by or on behalf of any member of a Hindu family assessed as undivided that a partition, whether total or partial, has taken place among the members of such family, the Income-tax Officer shall make an inquiry thereto after giving notice of the inquiry to all the members of the family.

(3) On the completion of the inquiry, the Income-tax Officer shall record a finding as to whether there has been a total or partial partition of the joint family property, and if there has been such a partition, the date on which it has taken place.

(4) Where a finding of total or partial partition has been recorded by the Income-tax Officer under this section, and the partition took place during the previous year,—

(a) the total income of the joint family in respect of the period up to the date of partition shall be assessed as if no partition had taken place, and

(b) each member or group of members shall, in addition to any tax for which he or it may be separately liable and notwithstanding anything contained in clause (2) of Section 10, be jointly and severally liable for the tax on the income so assessed.

(5) Where a finding of total or partial partition has been recorded by the Income-tax Officer under this section, and the partition took place after the expiry of the previous year, the total income of the previous year of the joint family shall be assessed as if no partition had taken place, and the provisions of clause (b) of sub-section (4) shall, so far as may be, apply to the case.

(6) Notwithstanding anything contained in this section, if the Income-tax Officer finds after completion of the assessment of a Hindu undivided family that the family has already effected a partition, whether total or partial, the Income-tax Officer shall proceed to recover the tax from every person who was a member of the family before the partition, and every such person shall be jointly and severally liable for the tax on the income so assessed.

(7) For the purposes of this section, the several liability of any member or group of members thereunder shall be computed according to the portion of the joint family property allotted to him or it at the partition, whether total or partial.

(8) The provisions of this section shall, so far as may be, apply in relation to the levy and collection of any penalty, interest, fine or other sum in respect of any period up to the date of the partition, whether total or partial, of a Hindu undivided family as they apply in relation to the levy and collection of tax in respect of any such period.

Explanation.—In this section—

(a) “partition” means—

(i) where the property admits of physical division, a physical division of the property, but a physical division of the income without a physical division of the property producing the income shall not be deemed to be a partition ; or

(ii) where the property does not admit of a physical division, then such division as the property admits of, but a mere severance of status shall not be deemed to be a partition ;

(b) “partial partition” means a partition which is partial as regards the persons constituting the Hindu undivided family, or the properties belonging to the Hindu undivided family, or both.

H.—Profits of non-residents from occasional shipping business.

172. Shipping business of non-residents.—(1) The provisions of this section shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any ship, belonging to or chartered by a non-resident, which carries passengers, live-stock, mail or goods shipped at a port in India, unless the Income-tax Officer is satisfied that there is an agent of the non-resident from whom the tax will be recoverable under the other provisions of this Act.

(2) Where such a ship carries passengers, live-stock, mail or goods shipped at a port in India, one-sixth of the amount paid or payable on account of such carriage to the owner or the charterer or to any person on his behalf, whether that amount is paid or payable in or out of India, shall be deemed to be income accruing in India to the owner or charterer on account of such carriage.

(3) Before the departure from any port in India of any such ship, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the owner or charterer or any person on his behalf, on account of the carriage of all passengers, live-stock, mail or goods shipped at that port since the last arrival of the ship thereat :

Provided that where the Income-tax Officer is satisfied that it is not possible for the master of the ship to furnish the return required by this sub-section before the departure of the ship from the port and provided the master of the ship has made satisfactory arrangements for the filing of the return and payment of the tax by any other person on his behalf, the Income-tax Officer may, if the return is filed within thirty days of the departure of the ship, deem the filing of the return by the person so authorised by the master as sufficient compliance with this sub-section.

(4) On receipt of the return, the Income-tax Officer shall assess the income referred to in sub-section (2) and determine the sum payable as tax thereon at the rate or rates in force applicable to the total income of a company

which has not made the arrangement referred to in Section 194 and such sum shall be payable by the master of the ship.

(5) For the purposes of determining the tax payable under sub-section (4), the Income-tax Officer may call for such accounts or documents as he may require.

(6) A port clearance shall not be granted to the ship until the Collector of Customs, or other officer duly authorised to grant the same, is satisfied that the tax assessable under this section has been duly paid or that satisfactory arrangements have been made for the payment thereof.

(7) Nothing in this section shall be deemed to prevent the owner or charterer of a ship from claiming before the expiry of the assessment year relevant to the previous year in which the date of departure of the ship from Indian port falls, that an assessment be made of the total income of the previous year and the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and if he so claims, any payment made under this section in respect of the passengers, live-stock, mail or goods shipped at Indian ports during that previous year shall be treated as a payment in advance of the tax leviable for that assessment year, and the difference between the sum so paid and the amount of tax found payable by him on such assessment shall be paid by him or refunded to him, as the case may be.

I.—Recovery of tax in respect of non-residents

173. Recovery of tax in respect of non-resident from his assets.—Without prejudice to the provisions of sub-section (1) of Section 161 or of Section 167, where the person entitled to the income referred to in clause (i) of sub-section (1) of Section 9 is a non-resident, the tax chargeable thereon, whether in his name or in the name of his agent who is liable as a representative assessee, may be recovered by deduction under any of the provisions of Chapter XVII-B and any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets, of the non-resident which are, or may at any time come, within India.

J.—Persons leaving India

174. Assessment of person leaving India.—(1) Notwithstanding anything contained in Section 4, when it appears to the Income-tax Officer that any individual may leave India during the current assessment year or shortly after its expiry and that he has no present intention of returning to India, the total income of such individual for the period from the expiry of the previous year for that assessment year up to the probable date of his departure from India shall be chargeable to tax in that assessment year.

(2) The total income of each completed previous year or part of any previous year included in such period shall be chargeable to tax at the rate or rates in force in that assessment year, and separate assessments shall be made in respect of each such completed previous year or part of any previous year.

(3) The Income-tax Officer may estimate the income of such individual for such period or any part thereof, where it cannot be readily determined in the manner provided in this Act.

(4) For the purpose of making an assessment under sub-section (1), the Income-tax Officer may serve a notice upon such individual requiring him to

furnish, within such time, not being less than seven days, as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (2) of Section 139, setting forth his total income for each completed previous year comprised in the period referred to in sub-section (1) and his estimated total income for any part of the previous year comprised in that period; and the provisions of this Act shall, so far as may be, and subject to the provisions of this section, apply as if the notice were a notice issued under sub-section (2) of Section 139.

(5) The tax chargeable under this section shall be in addition to the tax if any, chargeable under any other provisions of this Act.

(6) Where the provisions of sub-section (1) are applicable, any notice issued by the Income-tax Officer under sub-section (2) of Section 139 or sub-section (1) of Section 148 in respect of any tax chargeable under any other provision of this Act may, notwithstanding anything contained in sub-section (2) of Section 139 or sub-section (1) of Section 148, as the case may be, require the furnishing of the return by such individual within such period, not being less than seven days, as the Income-tax Officer may think proper.

K.—Persons trying to alienate their assets

175. Assessment of persons likely to transfer property to avoid tax.—Notwithstanding anything contained in Section 4, if it appears to the Income-tax Officer during any current assessment year that any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets with a view to avoiding payment of any liability under the provisions of this Act, the total income of such person for the period from the expiry of the previous year for that assessment year to the date when the Income-tax Officer commences proceeding under this section shall be chargeable to tax in that assessment year, and the provisions of sub-sections (2), (3), (4), (5) and (6) of Section 174 shall, so far as may be, apply to any proceedings in the case of any such person as they apply in the case of persons leaving India.

L.—Discontinued business or dissolution

176. Discontinued business.—(1) Notwithstanding anything contained in Section 4, where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year for that assessment year up to the date of such discontinuance may, at the discretion of the Income-tax Officer, be charged to tax in that assessment year.

(2) The total income of each completed previous year or part of any previous year included in such period shall be chargeable to tax at the rate or rates in force in that assessment year, and separate assessments shall be made in respect of each such completed previous year or part of any previous year.

(3) Any person discontinuing any business or profession shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof.

(4) Where any profession is discontinued in any year on account of the cessation of the profession by, or the retirement or death of, the person carrying on the profession, any sum received after the discontinuance shall be deemed to be the income of the recipient, and charged to tax accordingly in the year of receipt if such sum would have been included in the total income of the aforesaid person had it been received before such discontinuance.

(5) Where an assessment is to be made under the provisions of this section, the Income-tax Officer may serve on the person whose income is to be assessed or, in the case of a firm, on any person who was a partner of such firm at the time of its discontinuance or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 139 and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under sub-section (2) of Section 139.

(6) The tax chargeable under this section shall be in addition to the tax, if any, chargeable under any other provision of this Act.

(7) Where the provisions of sub-section (1) are applicable, and notice issued by the Income-tax Officer under sub-section (2) of Section 139 or sub-section (1) of Section 148 in respect of any tax chargeable under any other provisions of this Act may, notwithstanding anything contained in sub-section (2) of Section 139 or sub-section (1) of Section 148, as the case may be, require the furnishing of the return by the person to whom the aforesaid notices are issued within such period, not being less than seven days as the Income-tax Officer may think proper.

177. Association dissolved or business discontinued.—(1) Where any business or profession carried on by an association of persons has been discontinued or where an association of persons is dissolved, the Income-tax Officer shall make an assessment of the total income of the association of persons as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act shall apply, so far as may be, to such assessment.

(2) Without prejudice to the generality of the foregoing sub-section, if the Income-tax Officer or the Appellate Assistant Commissioner in the course of any proceeding under this Act in respect of any such association of persons as is referred to in that sub-section is satisfied that the association of persons was guilty of any of the acts specified in Chapter XXI, he may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.

(3) Every person who was at the time of such discontinuance or dissolution a member of the association of persons and the legal representative of any such persons who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the persons referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolutions, and all the provisions of this Act shall, so far as may be, apply accordingly.

(5) Nothing in the section shall affect the provisions of sub-section (6) of Section 159.

178. Company in liquidation.—(1) Every person—

(a) who is the liquidator of any company which is being wound up, whether under the orders of a court or otherwise ; or

(b) who has been appointed the receiver of any assets of a company (hereinafter referred to as the liquidator), shall within thirty days after he has become such liquidator, give notice of his appointment as such to the Income-tax Officer who is entitled to assess the income of the company.

(2) The Income-tax Officer shall, after making such enquiries or calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notices of the appointment of the liquidator the amount which, in the opinion of the Income-tax Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

(3) The liquidator—

(a) shall not without the leave of the Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Income-tax Officer under sub-section (2); and

(b) on being so notified, shall set aside an amount equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands :

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Commissioner reasonable.

(4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by sub-section (3) or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of that sub-section, he shall be personally liable for the payment of the tax which the company would be liable to pay :

Provided that if the amount of any tax payable by the company is notified under sub-section (2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

(6) The provisions of this section shall have effect notwithstanding anything to the contrary in any other law for the time being in force.

M.—Private company in liquidation

179. Liability of directors of private company in liquidation.—Notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), when any private company is wound up after the commencement of this Act; and any tax assessed on the company, whether before or in the course of or after its liquidation, in respect of any income of any previous year cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the

payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, mistake or breach of duty on his part in relation to the affairs of the company.

N.—Special provisions for certain kinds of Income

180. Royalties or copyright fees for literary or artistic work.—Where the time taken by the author of a literary or artistic work in the making thereof is more than twelve months, the amount received or receivable by him during any previous year on account of any lump sum consideration for the assignment or grant of any of his interest in the copyright of that work or of royalties or copyright fees (whether receivable in lump sum or otherwise), in respect of that work, shall, if he so claims, be allocated for purposes of assessment in such manner and to such period as may be prescribed.

Explanation.—For the purposes of this section, the expression, "author" includes a joint author, and the expression "lump sum", in regard to royalties or copyright fees, includes an advance payment on account of such royalties or copyright fees which is not returnable.

O.—Liability of State Governments

181. Interest on tax-free securities of State Government.—Income-tax shall be payable by a State Government on the interest on any security issued by it tax-free at such rate not exceeding twenty-five per cent as may be notified by the Central Government in the Official Gazette from time to time.

CHAPTER XVI

SPECIAL PROVISIONS APPLICABLE TO FIRMS

182. Assessment of registered firms.—(1) Notwithstanding anything contained in Sections 143 and 144 and subject to the provisions of sub-section (3), in the case of a registered firm, after assessing the total income of the firm,—

- (i) the income-tax payable by the firm itself shall be determined ; and
- (ii) the share of each partner in the income of the firm shall be included in his total income and assessed to tax accordingly.

(2) If such share of any partner is a loss it shall be set off against his other income or carried forward and set off in accordance with the provisions of Sections 70 to 75.

(3) Where any of the partners of a registered firm is a non-resident the tax on his share in the income of the firm shall be assessed on the firm at the rate or rates which would be applicable if it were assessed on him personally, and the tax so assessed shall be paid by the firm.

(4) A registered firm may retain out of the share of each partner in the income of the firm a sum not exceeding thirty per cent thereof until such time as the tax which may be levied on the partner in respect of that share is paid by him; and where the tax so levied cannot be recovered from the partner, whether wholly or in part, the firm shall be liable to pay the tax, to the extent of the amount retained or could have been so retained.

183. Assessment of unregistered firm.—In the case of an unregistered firm, the Income-tax Officer—

(a) may determine the tax payable by the firm itself on the basis of the total income of the firm; or

(b) if, in his opinion, the aggregate amount of the tax payable by the partners if the firm were treated as registered firm would be greater than the aggregate amount of the tax which would be payable by the firm under clause (a) and the tax which would be payable by the partners individually, may proceed to make the assessment under clause (ii) of sub-section (1) of Section 182 as if the firm were a registered firm; and where the procedure specified in this clause is applied to any unregistered firm, the provisions of sub-section (2), (3) and (4) of Section 182 shall apply thereto as they apply in the case of a registered firm.

B.—Registration of firms

184. Application for registration.—(1) Application for registration of a firm for the purposes of this Act may be made to the Income-tax Officer on behalf of any firm if—

(i) the partnership is evidenced by an instrument; and

(ii) the individual shares of the partners are specified in that instrument.

(2) Such application may, subject to the provisions of this section, be made either during the existence of the firm or after its dissolution.

(3) The application shall be made to the Income-tax Officer having jurisdiction to assess the firm, and shall be signed—

(a) by all partners (not being minors) personally; or

(b) in the case of a dissolved firm, by all persons (not being minors) who were partners in the firm immediately before its dissolution and by the legal representative of any such partner who is deceased.

Explanation.—In the case of any partner who is absent from India or is a lunatic or an idiot, the application may be signed by any person duly authorised by him in this behalf, or as the case may be, by a person entitled under law to represent him.

(4) The application shall be made before the end of the previous year for the assessment year in respect of which registration is sought:

Provided that the Income-tax Officer may entertain an application made after the end of the previous year, if he is satisfied that the firm was prevented by sufficient cause from making the application before the end of the previous year.

(5) The application shall be accompanied by the original instrument evidencing the partnership, together with a copy thereof :

Provided that if the Income-tax Officer is satisfied that for sufficient reason the original instrument cannot conveniently be produced, he may accept a copy of it certified in writing by all the partners (not being minors), or, where the application is made after the dissolution of the firm, by all the persons referred to in clause (b) of sub-section (3), to be a correct copy, or a certified copy of the instrument ; and in such cases the application shall be accompanied by a duplicate copy of the original instrument.

(6) The application shall be made in the prescribed form and shall contain the prescribed particulars.

(7) Where registration is granted to any firm for any assessment year, it shall have effect for every subsequent assessment year :

Provided that—

(i) there is no change in the constitution of the firm or the shares of the partners as evidenced by the instrument of partnership on the basis of which the registration was granted ; and

(ii) the firm furnishes, along with its return of income for the assessment year concerned, a declaration to that effect, in the prescribed form and verified in the prescribed manner.

(8) Where any such change has taken place in the previous year, the firm shall apply for fresh registration for the assessment year concerned in accordance with the provisions of this section.

185. Procedure on receipt of application.—(1) On receipt of an application for the registration of a firm, the Income-tax Officer shall inquire into the genuineness of the firm and its constitution as specified in the instrument of partnership, and—

(a) if he is satisfied that there is or was during the previous year in existence a genuine firm with the constitution so specified, he shall pass an order in writing registering the firm for the assessment year ;

(b) if he is not so satisfied, he shall pass an order in writing refusing to register the firm.

(2) The Income-tax Officer shall not reject an application for registration merely on the ground that the application is not in order, but shall intimate the defect to the firm and give an opportunity to rectify the defect in the application within a period of one month from the date of such intimation.

(3) If the defect is not rectified within such time, the Income-tax Officer may reject the application.

(4) Where a firm is registered for any assessment year, the Income-tax Officer shall record a certificate on the instrument of partnership or on the certified copy submitted in lieu of the original instrument, as the case may be,

to the effect that the firm has been registered under this Act, for that assessment year; and where a declaration under sub-section (7) of Section 184 is furnished by the firm, for the relevant subsequent assessment year.

(5) Notwithstanding anything contained in this section, where, in respect of any assessment year, there is, on the part of a firm, any such failure as is mentioned in Section 144, the Income-tax Officer may refuse to register the firm for the assessment year.

186. Cancellation of registration.—(1) If, where a firm has been registered, or its registration has effect under sub-section (7) of Section 184 for an assessment year, the Income-tax Officer is of opinion that there was during the previous year no genuine firm in existence as registered, he may, after giving the firm a reasonable opportunity of being heard and with the previous approval of the Inspecting Assistant Commissioner, cancel the registration of the firm for that assessment year:

Provided that no such cancellation shall be made after the expiry of eight years from the end of the assessment year in respect of which the registration has been granted or has effect.

(2) If, where a firm has been registered or its registration has effect under sub-section (7) of Section 184 for any assessment year, there is, on the part of the firm, any such failure in respect of the assessment year as is mentioned in Section 144, the Income-tax Officer may cancel the registration of the firm for the assessment year, after giving the firm not less than fourteen day's notice intimating his intention to cancel its registration and after giving it a reasonable opportunity of being heard.

(3) Where the registration of a firm is cancelled for any assessment year, the Income-tax Officer shall amend the assessment of the firm and its partners for that assessment year on the footing that the firm is an unregistered firm.

(4) The provisions of Section 154 shall, so far as may be, apply to the amendments of the assessments of the firm and its partners under sub-section (3) of this section, the period of four years specified in sub-section (7) of that section being reckoned from the date of the order cancelling the registration.

C.—Changes in constitution, succession and dissolution

187. Change in constitution of a firm.—Where at the time of making an assessment under Section 143 or Section 144 it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm, as constituted at the time of making the assessment:

Provided that—

(i) the income of the previous year shall, for the purpose of inclusion in the total income of the partners be apportioned between the partners who, in such previous year, were entitled to receive the same; and

(ii) when the tax assessed upon a partner cannot be recovered from him, it shall be recovered from the firm as constituted at the time of making assessment.

(2) For the purposes of this section, there is a change in the constitution of the firm—

(a) if one or more of the partners cease to be partners or one or more new partners are admitted, in such circumstances that one or more of the persons who were partners of the firm before the change continue as partner or partners after the change; or

(b) where all the partners continue with a change in their respective shares or in the shares of some of them.

188. Succession of one firm by another firm.—Where a firm carrying on a business or profession is succeeded by another firm, and the case is not one covered by Section 187, separate assessments shall be made on the predecessor firm and the successor firm in accordance with the provisions of Section 170.

189. Firm dissolved or business discontinued.—(1) Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the Income-tax Officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place and all the provisions of this Act, including provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment.

(2) Without prejudice to the generality of the foregoing sub-section, if the Income-tax Officer or the Appellate Assistant Commissioner in the course of any proceeding under this Act in respect of any such firm as is referred to in that sub-section is satisfied that the firm was guilty of any of the acts specified in Chapter XXI he may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.

(3) Every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

(4) Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the persons referred to in sub-section (3) from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.

(5) Nothing in this section shall affect the provisions of sub-section (6) of Section 159.

CHAPTER XVII

COLLECTION AND RECOVERY OF TAX

A.—General

190. Deduction at source and advance payment.—(1) Notwithstanding that the regular assessment in respect of any income is to be made in a later assessment year, the tax on such income shall be payable by deduction at source or by advance payment, as the case may be, in accordance with the provisions of this Chapter.

(2) Nothing in this section shall prejudice the charge of tax on such income under the provisions of sub-section (1) of Section 4.

191. Direct payment.—In the case of income in respect of which provision is not made under this Chapter for deducting income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of this Chapter, income-tax shall be payable by the assessee direct.

B.—Deduction at source

192. Salary.—(1) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year.

(2) (Omitted).

(3) The person responsible for making the payment referred to in sub-section (1) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.

(4) The trustees of a recognised provident fund, or any person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, in cases where sub-rule (1) of rule 9 of Part A of the Fourth Schedule applies, at the time an accumulated balance due to an employee is paid, make therefrom the deduction provided in rule 10 of Part A of the Fourth Schedule.

(5) Where any contributions made by an employer, including interest on such contributions, if any, in an approved superannuation fund is paid to the employee, tax on the amounts so paid shall be deducted by the trustees of the fund to the extent provided in rule 6 of Part B of the Fourth Schedule.

(6) For the purposes of deduction of tax on salary payable in foreign currency, the value in rupees of such salary shall be calculated at the prescribed rate of exchange.

193. Interest on securities.—The person responsible for paying any income chargeable under the head "Interest on securities" shall, at the time of payment deduct income-tax at the rates in force on the amount of the interest payable :

Provided that no tax shall be deducted from—

(i) any interest payable on $4\frac{1}{4}$ per cent National Defence Bonds, 1972, where the bonds are held by an individual, not being a non-resident ; or

(ia) any interest payable to an individual on $4\frac{1}{4}$ per cent National Defence Loan, 1968, or $4\frac{3}{4}$ per cent National Defence Loan, 1972 ; or

(ii) any interest payable on National Savings Certificates (First Issue) ; or

(iia) any interest payable on 7 year National Savings Certificates (IV Issue) ; or

(iib) any interest payable on such debentures, issued by any co-operative society (including a co-operative land mortgage bank or a co-operative land development bank) or any other institution or authority, as the Central Government may, by notification in the Official Gazette, specify in this behalf ; or

(iii) any interest payable on $6\frac{1}{2}$ per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, where the bonds are held by an individual not being a

non-resident, and the holder thereof makes a declaration in writing before the person responsible for paying the interest that the total nominal value of the $6\frac{1}{2}$ per cent Gold Bonds, 1977, or as the case may be, the 7 per cent Gold Bonds, 1980, held by him (including such bonds, if any, held on his behalf by any other person) did not in either case exceed ten thousand rupees at any time during the period to which the interest relates; or

(iv) any interest payable on any other security of the Central or State Government, where the security is held by an individual, not being a non-resident, and the holder thereof makes a declaration in writing before the person responsible for paying the interest that—

- (a) he has not previously been assessed under this act or under the Indian Income-tax Act, 1922;
- (b) his total income of the previous year in which the interest is due is not likely to exceed the maximum amount not chargeable to tax; and
- (c) the total nominal value of the securities held by him (including such securities, if any, as are held on his behalf by any other person) did not exceed two thousand five hundred rupees at any time during the said previous year.

194. Dividends.—The principal officer of an Indian company or a company which has made the prescribed arrangements for the declaration and payment of dividends (including dividends on preference shares) within India, shall before making any payment in cash or before issuing any cheque or warrant in respect of any dividend or before making any distribution or payment to a shareholder, of any dividend within the meaning of sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) or sub-clause (e) of clause (22) of Section 2, deduct from the amount of such dividend, income-tax at the rates in force:

Provided that where in the case of any shareholder, not being a company, the Income-tax Officer gives a certificate in writing in the prescribed manner that to the best of his belief the total income of the shareholder will be less than the minimum liable to income-tax, the person responsible for paying any dividend to the shareholder shall so long as the certificate is in force pay the dividend without any deduction.

194A. Interest other than "Interest on securities".—(1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income chargeable under the head "interest on securities", shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force:

Provided that no such deduction shall be made in a case where the person (not being a company or a registered firm) entitled to receive such income furnishes to the person responsible for making the payment—

- (a) an affidavit, or
- (b) a statement in writing,

declaring that his total income assessable for the assessment year next following the financial year in which the income is credited or paid will be less than the minimum liable to income-tax.

(2) The statement in writing referred to in sub-section (1) shall also contain such other particulars as may be prescribed, be verified in the prescribed manner, be signed in the presence of—

- (a) a Member of Parliament or a State Legislature ; or
- (b) a member of a District Council or a Metropolitan Council, Municipal Corporation or Municipal Committee ; or
- (c) a Gazetted Officer of the Central or a State Government ; or
- (d) an officer of any banking company (including a co-operative bank) of the rank of sub-agent, agent or manager,

and bear an attestation by such member or officer to the effect that the person who has signed the statement is known to him.

(3) The provisions of sub-section (1) shall not apply—

- (i) where the income credited or paid at any one time does not exceed Rs. 400 ;
- (ii) to such income credited or paid before the 1st day of October, 1967:
- (iii) to such income credited or paid to—
 - (a) any banking company to which the Banking Regulation Act, 1949, (10 of 1949) applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or
 - (b) any financial corporation established by or under a Central, State or Provincial Act, or
 - (c) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or
 - (d) the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), or
 - (e) any company or co-operative society carrying on the business of insurance, or
 - (f) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.
- (iv) to such income credited or paid by a firm to a partner of the firm ;
- (v) to such income credited or paid by a co-operative society to any other co-operative society.
- (vi) to such income credited or paid in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf in the Official Gazette ;
- (vii) to such income credited or paid in respect of deposits with a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or institution referred to in Section 51 of that Act), or with a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank).

Explanation.—In this section, “Gazetted Officer” includes a Tehsildar or a Mamlatdar of a Taluka or any other officer performing functions similar to those of Tehsildar Mamlatdar.

195. Other sums.—(1) Any person responsible for paying to a non-resident, not being a company, or to a company which has made the prescribed arrangements for the declaration and payment of dividends within India, any interest, not being “Interest on securities”, or any other sum, not being divi-

agents, chargeable under the provisions of this Act, shall, at the time of payment, unless he is himself liable to pay any income-tax thereon as an agent, deduct income-tax thereon at the rates in force:

Provided that nothing in this sub-section shall apply to any payment made in the course of transactions in respect of which a person responsible for the payment is deemed under the proviso to sub-section (1) of Section 163 not to be an agent of the payee.

(2) Where the person responsible for paying any such sum chargeable under this act (other than interest including interest on securities, dividend and salary) to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application to the Income-tax Officer to determine, by general or special order, the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under sub-section (1) only on that proportion of the sum which is so chargeable.

(3) Subject to rules made under sub-section (5), any person entitled to receive any interest or other sum on which income-tax has to be deducted under sub-section (1) may make an application in the prescribed form to the Income-tax Officer for the grant of a certificate authorising him to receive such interest or other sum without deduction of tax under that sub-section, and where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon under sub-section (1).

(4) A certificate granted under sub-section (3) shall remain in force till the expiry of the period specified therein or, if it is cancelled by the Income-tax Officer before the expiry of such period, till such cancellation.

(5) The Board may, having regard to the convenience of assesseees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (3) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.

196. Interest or dividend or other sums payable to Government, Reserve Bank or certain corporations.—Notwithstanding anything contained in the foregoing provisions of this Chapter, no deduction of tax shall be made by any person from any sums payable to—

- (i) the Government, or
- (ii) the Reserve Bank of India, or
- (iii) a corporation established by or under a Central Act which is, under any law for the time being in force, exempt from income-tax on its income.

where such sum is payable to it by way of interest or dividend in respect of any securities or shares owned by it or in which it has full beneficial interest, or any other income accruing or arising to it.

197. Certificate for deduction at lower rate.—(1) Where, in the case of any income of any person other than company—

(a) income-tax is required to be deducted at the time of credit or, as the case may be at the time of payment at the rates in force under the provisions of Sections 192, 193, 194A and 195;

(b) being a non-resident, income-tax is required to be deducted at the time of payment at the rates in force under the provisions of Section 194.

the Income-tax Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at any lower rates or no deduction of Income-tax, as the case may be, the Income-tax Officer shall, on an application made by the assessee in this behalf, give to him such certificate as may be appropriate.

(2) Where any such certificate is given, the person responsible for paying the income shall, until such certificate is cancelled by the Income-tax Officer, deduct income-tax at the rates specified in such certificate or deduct no tax, as the case may be.

(3) Where the principal officer of a company considers that, by reason of the provisions of Section 80K, the whole or any portion of the dividend referred to in Section 194 will be deductible in computing the total income of the recipient, he may, before paying the dividend to the shareholder or issuing any cheque or warrant in respect thereof, make an application to the Income-tax Officer to determine the appropriate proportion of the dividend to be deducted under the provisions of Section 80K; and on such determination by the Income-tax Officer no tax shall be deducted on such proportionate amount.

198. Tax deducted is income received.—All sums deducted in accordance with the provision of Sections 192 to 194, Section 194A and Section 195 shall, for the purpose of computing the income of an assessee be, deemed to be income received.

199. Credit for tax deducted.—Any deduction made in accordance with the provisions of Sections 192 to 194, Section 194A and Section 195 and paid to the Central Government shall be treated as payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security or of the shareholder, as the case may be, and credit shall be given to him for the amount so deducted on the production of the certificate furnished under Section 203 in the assessment (including a provisional assessment under Section 141A), if any, made for the immediately following assessment year under this Act:

Provided that—

(i) in a case where such person or owner or shareholder is a person whose income is included under the provisions of Section 60, Section 61, Section 64, Section 93 or Section 94 in the total income of another person, the payment shall be deemed to have been made on behalf of, and the credit shall be given to such other person:

(ii) in any other case, where the dividend on any share is assessable as the income of a person other than the shareholder, the payment shall be deemed to have been made on behalf of, and the credit shall be given to, such other person in such circumstances as may be prescribed:

Provided further that where any security or share in a company is owned jointly by two or more persons not constituting a partnership, the payment shall be deemed to have been made on behalf of, and the credit shall be given to, each such person in the same proportion in which the interest on such security or dividend on such share is assessable as his income.

200. Duty of person deducting tax.—Any person deducting any sum in accordance with the provisions of Sections 192 to 194, Section 194A and Section 195 shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs.

201. Consequence of failure to deduct or pay.—(1) If any such person and in the cases referred to in Section 194, the principal officer and the company of which he is the principal officer does not deduct or after deducting fails to pay the tax as required by or under the Act, he or it shall, without prejudice to any other consequence which he or it may incur, be deemed to be an assessee in default in respect of the tax :

Provided that no penalty shall be charged under Section 221 from such person, principal officer or company unless the Income-tax Officer is satisfied that such person or principal officer or company, as the case may be, has without good and sufficient reasons failed to deduct and pay the tax.

(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct or after deduction fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest at nine per cent per annum on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid.

(2) Where the tax has not been paid as aforesaid after it is deducted, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (1A) shall be a charge upon all the assets of the person or the company, as the case may be, referred to in sub-section (1).

202. Deduction only one mode of recovery.—The power to levy tax by deduction under Sections 192 to 194, Section 194A and Section 195 shall be without prejudice to any other mode of recovery.

203. Certificate for tax deducted.—Every person deducting tax in accordance with the provisions of Sections 192 to 194, Section 194A and Section 195 shall, at the time of credit or payment of the sum, or as the case may be, at the time of issue of a cheque or warrant for payment of any dividend to a shareholder, furnish to the person to whose account such credit is given or to whom such payment is made or the cheque or warrant is issued, a certificate to the effect that tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted and such other particulars as may be prescribed.

204. Meaning of "Person responsible for paying".—For the purposes of Sections 192 to 194, Section 194A, Sections 195 to 203 and Section 285, the expression "person responsible for paying" means—

(i) in the case of payments of income chargeable under the head "Salaries", other than payments by the Central Government or the Government of a State, the employer himself or, if the employer is a Company, the company itself, including the principal officer thereof ;

(ii) in the case of payments of income chargeable under the head "Interest on securities", other than payments made by or on behalf of the Cen-

tral Government or the Government of a State, the local authority, corporation or company, including the principal officer thereof;

(iii) in the case of credit, or, as the case may be, payments of any other sum chargeable under the provisions of this Act, the payer himself or if the payer is a company, the company itself including the principal officer thereof.

205. Bar against direct demand on assessee.—Where tax is deductible at the source under Sections 192 to 194, Section 194A, and Section 195 the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.

206. Person paying salary to furnish prescribed return.—(1) The prescribed person in the case of every office of the Government, the principal officer in the case of every company, the prescribed person in the case of every local authority or other public body or association, and every private employer shall prepare, and within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form and verified in the prescribed manner, a return, in writing showing---

- (a) the name and, so far as it is known, the address of every person who was receiving on the 31st day of March, or has received or to whom was due during the year ending on that date, from the Government, company, authority, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed;
- (b) the amount of the income so received by or so due to each such person, and the time or times at which the same was paid or due, as the case may be;
- (c) the amount deducted in respect of income-tax from the income of such person.

(2) Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under this section.

206A. Person paying interest, to residents without deduction of tax, to furnish prescribed return.—Any person responsible for paying any income referred to in Section 194A shall prepare, and within thirty days from the 31st day of March in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form and verified in the prescribed manner a return in writing showing—

- (a) the name and address of every person who has furnished to him an affidavit or a statement under the proviso to sub-section (1) of Section 194A;
- (b) the amount of the income credited or paid during the financial year to each person and the time or times at which the same was credited or paid, as the case may be, and
- (c) such other particulars as may be prescribed.

C.—Advance payment of tax

207. Advance tax and income subject to advance tax.—(1) Tax shall be payable in advance in accordance with the provisions of Sections of 208 to 219 in the case of income other than income chargeable under the head "Capital gains".

(2) Such income is hereinafter in this Chapter referred to as "income subject to advance tax", and such tax is hereinafter in this Chapter referred to as "advance tax".

208. Condition of liability to pay advance tax.—(1) Advance tax shall be payable during the financial year—

(a) where the total income, exclusive of capital gains, of the assessee, referred to in sub-clause (i) of clause (a) of Section 209, exceeds the amount specified in sub-section (2), or

(b) where it is payable by virtue of the provisions of sub-section (3) of Section 212.

(2) The amount referred to in clause (a) of sub-section (1) shall be—

(a) in the case of a company or a local authority ... Rs. 2,500 ;

(b) in the case of a registered firm ... Rs. 30,000 ;

(c) in the case of a person other than a company, a local authority or a registered firm,—

(i) where such person was not resident in India during the previous year referred to in sub-clause (i) of clause (a) of Section 209 or such person being a person referred to in sub-section (3) of Section 212 is not likely to be resident in India during the previous year relevant to the assessment year next following the financial year in which the advance tax is payable ... Rs. 5,000

(ii) in any other case ... Rs. 10,000

209. Computation of advance tax.—The amount of advance tax payable by an assessee in the financial year shall be computed as follows :

(a) (i) his total income of the latest previous year in respect of which he has been assessed by way of regular assessment shall first be ascertained ;

(ii) the amount of capital gains, if any, included in such total income shall be deducted therefrom, and on the balance income-tax shall be calculated at the rates in force in the financial year ;

(iii) the income-tax so calculated shall be reduced by the amount of income-tax which would be deductible during the said financial year in accordance with the provisions of Sections 192 to 194, Section 194A and Section 195 on any income, (as computed before allowing any deductions admissible under this Act) on which tax is required to be deducted under the said sections and which has been taken into account in computing the said total income ;

(iv) the net amount of income-tax calculated in accordance with sub-clause (iii) shall, subject to provisions of clause (c) and (d), be the advance tax payable ;

(b) (Omitted).

(c) in cases where an estimate is sent by the assessee under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) of Section 212, the total income so estimated shall, for the purposes of calculation of tax under this section, be substituted for the total income referred to in clause (a),

(d) in cases where—

(i) the total income of the latest previous year [being a year later than the previous year referred to in clause (a)] on the basis of which tax has been paid by the assessee under Section 140A or a provisional assessment has been made under Section 141, exceeds the total income referred to in clause (a), or

(ii) the Income-tax Officer makes an amended order referred to in sub-section (3) of Section 210 on the basis of the total income on which tax has been paid by the assessee under Section 140A or in respect of which a provisional assessment has been made under Section 141,

the total income referred to in clause (a) shall be substituted,—

(1) in a case falling under sub-clause (i) by the total income on the basis of which tax has been paid under Section 140A or, as the case may be, the provisional assessment has been made under Section 141, whichever relates to the latest previous year and where both relate to the same latest previous year, whichever is higher, and

(2) in a case falling under sub-clause (ii), by the total income on the basis of which the amended order under sub-section (3) of Section 210 is made.

Explanation.—If the assessee is a partner of a registered firm and an assessment of the firm has been completed for a previous year later than the latest previous year for which the assessee's assessment has been completed, his share in the income of the firm shall, for the purposes of clause (a), be included in his total income on the basis of the assessment of the firm.

210. Order by Income-tax Officer.—(1) Where a person has been previously assessed by way of regular assessment under this Act or under the Indian Income-tax Act, 1922 (11 of 1922), the Income-tax Officer may, on or after the 1st day of April in the financial year, by order in writing require him to pay to the credit of the Central Government advance tax determined in accordance with the provisions of Sections 207, 208 and 209.

(2) The notice of demand issued under Section 156 in pursuance of such order shall specify the instalments in which the advance tax is payable under Section 211.

(3) If, after the making of an order by the Income-tax Officer under this section and at any time before the date which is fifteen days prior to the date on which the last instalment of advance tax is payable by the assessee under sub-section (1) of Section 211, tax is paid by the assessee under Section 140A, or a regular assessment or a provisional assessment under Section 141 of the assessee (or the registered firm of which he is a partner) is made in respect of a previous year later than that referred to in order of the Income-tax Officer, the Income-tax Officer may make an amended order requiring the assessee to pay in one

instalment on the specified date or in equal instalments on the specified dates, if more than one falling after the date of the amended order, the advance tax computed on the basis of the total income on which tax been paid under Section 140A or in respect of which the regular assessment or the provisional assessment aforesaid has been made as reduced by the amount, if any, paid in accordance with the original order :

211. Instalments of advance tax.—(1) Subject to the provisions of this section and of Section 212, advance tax shall be payable in three equal instalments on the following dates during the financial year, namely—

(i) the 15th day of June, the 15th day of September and the 15th day of December, in the case of an assessee whose total income to the extent of 75 per cent thereof or more is derived from a source or sources for which the previous year (relevant to the assessment year next following the financial year aforesaid) ends on or before the 31st day of December :

(ii) the 15th day of September, the 15th of December and the 15th day of March in any other case :

Provided that in respect of any class of assessee referred to in clause (i), the Board may, having regard to the nature of dealings in the business carried on by such assessee, the method of accounting followed by them and other relevant factors, authorise, by notification in the Official Gazette and subject to such conditions as may be specified therein the payment of the last instalment of the advance tax on the 15th day of March during the financial year, instead of on the 15th day of December.

Explanation.—In this sub-section, “total income” means,—

(a) in a case where advance tax is paid by the assessee in accordance with an order of the Income-tax Officer under Section 210, the total income with reference to which the advance tax payable has been calculated in such order ;

(b) in a case where the advance tax is paid in accordance with an estimate made by the assessee under Section 212, the total income with reference to which the advance tax is so estimated,

as reduced, in either case, by the capital gains, if any, included therein.

(2) If the notice of demand issued under Section 156 in pursuance of the order under Section 210 is served after any of the dates on which the instalments specified therein are payable, the advance tax shall be payable in equal instalments on each of such of those dates as after the date of the service of the notice of demand, or in one sum on the 15th day of March if the notice is served after the 15th day of December.

212. Estimate by assessee.—(1) If any assessee who is required to pay advance tax by an order under Section 210 estimates at any time before the last instalment of advance tax is due in his case that, by reason of his total income (exclusive of capital gains, if any) of period which would be the previous year for the immediately following assessment year (such total income being, thereafter in this section referred to as current income) being likely to be less than

the income on which the advance tax payable by him under Section 210 has been computed or for any other reason, the advance tax payable by him would be less than the amount which he is so required to pay, he may, at this option, send to the Income-tax Officer an estimate of—

- (i) the current income, and
- (ii) the advance tax payable by him on the current income calculated in the manner laid down in Section 209,

and shall pay such amount of advance tax as accords with his estimate in equal instalments on such of the dates applicable in his case under Section 211 as have not expired, or in one sum if only the last of such dates has not expired.

(2) The assessee may send a revised estimate of the advance tax payable by him before any one of the dates specified in Section 211 and adjust any excess or deficiency in respect of any instalment already paid in subsequent instalment or in subsequent instalments.

(3) Any person who has not previously been assessed by way of regular assessment under this Act or under the Indian Income-tax Act, 1922, shall, in each financial year, before the date on which the last instalment of advance tax is due in his case under sub-section (1) of Section 211 if his current income is likely to exceed the amount specified in sub-section (2) of Section 208, send to the Income-tax Officer an estimate of—

- (i) the current income, and
- (ii) the advance-tax payable by him on the current income calculated in the manner laid down in Section 209,

and shall pay such amount of advance tax as accords with his estimate on such of the dates applicable in his case under Section 211 as have not expired, by instalments which may be revised according to sub-section (2).

(3A) In the case of any assessee who is required to pay advance tax by an order under Section 210, if by reason of the current income being likely to be greater than the income on which the advance tax payable by him under Section 210 has been computed or for any other reason the amount of advance tax computed in the manner laid down in Section 209 on the current income (which shall be estimated by the assessee) exceeds the amount of advance tax demanded from him under Section 210 by more than $33\frac{1}{3}$ per cent of the latter amount, he shall, at any time before the date on which the last instalment of advance tax is due from him, to the Income-tax Officer an estimate of—

- (i) the current income, and
- (ii) the advance tax payable by him on the current income calculated in the manner laid down in Section 209,

and shall pay such amount of advance tax as accords with his estimate on such of the dates applicable in his case under Section 211 as have not expired, by instalments which may be revised according to sub-section (2).

Provided that in a case where the Commissioner is satisfied that, having regard to the nature of the business carried on by the assessee and the date of expiry of the previous year in respect of such business, it will be difficult for the assessee to furnish the estimate required to be furnished by him in accordance with the provisions of this sub-section before the date on which the last instalment of advance tax is due in his case, he may, if the assessee pays the

advance tax demanded from him under Section 210 before such date, extend the date for furnishing such estimate up to a period of thirty days immediately following the last date of the previous year in respect of that business, and where the date is so extended, the assessee shall pay, on or before the date as so extended, the amount by which the amount of advance tax already paid him falls short of the advance tax payable in accordance with his estimate.

(4) Every estimate under this section shall be sent in the prescribed form and verified in the prescribed manner.

213. Commission receipts.—Where part of the income subject to advance tax consists of any income of the nature of commission which is receivable periodically and is not received or adjusted by the payer in the assessee's account before any of the instalments of advance tax become due, he may defer payment of advance tax on that part of his income to the date on which such income would be normally received or adjusted and, if he does so, he shall communicate to the Income-tax Officer the date to which such payment is deferred :

Provided that, if the advance tax of which the payment is deferred is not paid within fifteen days of the date on which such income or part thereof is received or adjusted by the payer in the assessee's account the advance tax shall be payable with nine per cent simple interest per annum from the date of such receipt or adjustment to the date of payment of the advance tax.

214. Interest payable by Government.—(1) The Central Government shall pay simple interest at nine per cent per annum on the amount by which the aggregate sum of any instalments of advance tax paid during any financial year in which they are payable under Sections 207 to 213 exceeds the amount of the tax determined on regular assessment, from the 1st day of April next following the said financial year to the date of the regular assessment for the assessment year immediately following the said financial year, and where any such instalment is paid after the expiry of the financial year during which it is payable by reason of the provisions of Section 213, interest as aforesaid shall also be payable on that instalment from the date of its payment to the date of regular assessment :

Provided that in respect of any amount refunded on a provisional assessment under Section 141A, no interest shall be paid for any period after the date of such provisional assessment.

(1A) Where on completion of the regular assessment the amount on which interest was paid under sub-section (1) has been reduced, the interest shall be reduced accordingly and the excess, if any, paid shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.

(2) On any portion of such amount which is refunded under this Chapter, interest shall be payable only up to the date on which the refund was made.

215. Interest payable by assessee.—(1) Where, in any financial year, an assessee has paid advance tax under section 212 on the basis of his own estimate, and the advance tax so paid is less than seventy-five per cent. of the assessed tax, simple interest at the rate of nine per cent. per annum from the 1st day of April, next following the said financial year up to the date of the regular assessment shall be payable by the assessee upon the amount by which the advance tax so paid falls short of the assessed tax.

(2) Where before the date of completion of a regular assessment a provisional assessment is made under Section 141 or tax is paid by the assessee otherwise than in pursuance of such a provisional assessment—

(i) interest shall be calculated in accordance with the foregoing provision up to the date on which the tax is paid either as provisionally assessed or otherwise; and

(ii) thereafter interest shall be calculated at the rate aforesaid on the amount by which the tax as so paid (in so far as it relates to income subject to advance tax) falls short of the assessed tax.

(3) Where as a result of an order under Section 154 or Section 155 or Section 250 or Section 254 or Section 260 or Section 262 or Section 264, the amount on which interest was payable under this section has been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.

(4) In such cases and under such circumstances as may be prescribed, the Income-tax Officer may reduce or waive the interest payable by the assessee under this section.

(5) In this section and Sections 217 and 273, "assessed tax" means the tax determined on the basis of the regular assessment (reduced by the amount of tax deductible in accordance with the provisions of Sections 192 to 194, Section 194A and Section 195) so far as such tax relates to income subject to advance tax and so far as it is not due to variations in the rates of tax made by the Finance Act enacted for the year for which the regular assessment is made.

216. Interest payable by assessee in case of under-estimate, etc.—Where, on making the regular assessment, the Income-tax Officer finds that any assessee has—

(a) under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) of Section 212 under-estimated the advance tax payable by him and thereby reduced the amount payable in either of the first two instalments; or

(b) under Section 213 wrongly deferred the payment of advance tax on a part of his income;

he may direct that the assessee shall pay simple interest at nine per cent per annum—

(i) in the case referred to in clause (a), for the period during which the payment was deficient, on the difference between the amount paid in each such instalment and the amount which should have been paid, having regard to the aggregate advance tax actually paid during the year; and

(ii) in the case referred to in clause (b), for the period during which the payment of advance tax was so deferred.

Explanation.—For the purposes of this section, any instalment due before the expiry of six months from the commencement of the previous year in respect of which it is to be paid shall be deemed to have become due fifteen days after the expiry of the said six months.

217. Interest payable by assessee when no estimate made.—(1) Where, on making the regular assessment, the Income-tax Officer finds that any such

person as is referred to in sub-section (3) of Section 212 has not sent the estimate referred to therein, simple interest at the rate of nine per cent per annum from the 1st day of April next following the financial year in which the advance tax was payable in accordance with the said sub-section up to the date of the regular assessment shall be payable by the assessee upon the amount equal to the assessed tax as defined in sub-section (5) of Section 215.

(1A) Where, on making the regular assessment, the Income-tax Officer finds that any such person as is referred to in sub-section (3A) of Section 212 has not sent the estimate referred to therein, simple interest at the rate of nine per cent. per annum from the 1st day of April next following the financial year in which the advance tax was payable in accordance with the said sub-section up to the date of the regular assessment shall be payable by the assessee upon the amount by which the advance tax paid by him falls short of the assessed tax as defined in sub-section (5) of Section 215.

(2) The provisions of sub-section (2), (3) and (4) of the Section 215 shall apply to interest payable under this section as they apply to interest payable under that section.

218. When assessee deemed to be in default.—(1) If any assessee does not pay on the specified date any instalment of advance tax that he is required to pay under Section 210 and does not, before the date on which any such instalment as is not paid becomes due, send under sub-section (1) or sub-section (2) of Section 212 an estimate or a revised estimate of the advance tax payable by him, he shall be deemed to be an assessee in default in respect of such instalment or instalments.

(2) If any assessee has sent under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) of Section 212 an estimate or a revised estimate of the advance tax payable by him, but does not pay any instalment in accordance therewith on the date or dates specified in Section 211, he shall be deemed to be an assessee in default in respect of such instalments :

Provided that the assessee shall not, under sub-section (1) or this sub-section, be deemed to be in default in respect of any amount of which the payment is deferred under Section 213 until after the date communicated by him to the Income-tax Officer under that section.

219. Credit for advance tax.—Any sum, other than a penalty or interest, paid by or recovered from an assessee as advance tax in pursuance of this Chapter shall be treated as a payment of tax in respect of the income of the period which would be the previous year for an assessment for the assessment year next following the financial year in which it was payable and credit therefor shall be given to the assessee in the regular assessment :

Provided that where, before the completion of the regular assessment, a provisional assessment is made under Section 141A, the credit shall be given also in such provisional assessment.

D.—Collection and recovery

220. When tax payable and when assessee deemed in default.—(1) Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under Section 156 shall be paid within thirty-five days of the service

of the notice at the place and to the person mentioned in the notice :

Provided that, where the Income-tax Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty-five days aforesaid is allowed, he may, with the previous approval of the Inspecting Assistant Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty-five days aforesaid, as may be specified by him in the notice of demand.

(2) If the amount specified in any notice of demand under Section 156 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at nine per cent per annum from the day commencing after the end of the period mentioned in sub-section (1) :

Provided that, where as a result of an order under Section 154, or Section 155, or Section 250, or Section 254, or Section 260, or Section 262, or Section 264, the amount on which interest was payable under this Section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.

(3) Without prejudice to the provisions contained in sub-section (2), on the application made by the assessee before the expiry of the due date under sub-section (1), the Income-tax Officer may extend the time for payment or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.

(4) If the amount is not paid within the time limited under sub-section (1) or extended under sub-section (3), as the case may be, at the place and to the person mentioned in the said notice the assessee shall be deemed to be in default.

(5) If, in a case where payment by instalments is allowed under sub-section (3), the assessee commits default in paying any one of the instalments within the time fixed under that sub-section, the assessee shall be deemed to be in default as to the whole of the amount then outstanding and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

(6) Where an assessee has presented an appeal under Section 246 the Income-tax Officer may in his discretion, and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

(7) Where an assessee has been assessed in respect of income arising outside India in a country the law of which prohibit or restrict the remittance of money to India, the Income-tax Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.—For the purposes of this section, income shall be deemed to have been brought into India if it has been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee

outside India or if the income, whether capitalised or not, has been brought into India in any form.

221. Penalty payable when tax in default.—(1) When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable under sub-section (2) of Section 220, be liable to pay by way of penalty, an amount which, in the case of a continuing default, may be increased from time to time, so however, that the total amount of penalty does not exceed the amount of tax in arrears :

Provided that before levying any such penalty the assessee shall be given a reasonable opportunity of being heard.

(2) Where as a result of any final order the amount of tax, with respect to the default in the payment of which the penalty was levied, has been wholly reduced, the penalty levied shall be cancelled and the amount of penalty paid shall be refunded.

222. Certificate to Tax Recovery Officer.—(1) When an assessee is in default or is deemed to be in default in making a payment of tax, the Income-tax Officer may forward to the Tax Recovery Officer a certificate under his signature specifying the amount of arrears due from the assessee, and the Tax Recovery Officer on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein by one or more of the modes mentioned below, in accordance with the rules laid down in the Second Schedule

- (a) attachment and sale of the assessee's movable property ;
- (b) attachment and sale of the assessee's immovable property ;
- (c) arrest of the assessee and his detention in prison ;
- (d) appointing a receiver for the management of the assessee's movable and immovable properties.

(2) The Income-tax Officer may issue a certificate under sub-section (1) notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

223. Tax Recovery Officer to whom certificate is to be issued.—

(1) The Income-tax Officer may forward the certificate referred to in Section 222 to—

(a) the Tax Recovery Officer within whose jurisdiction the assessee carries on his business or profession or within whose jurisdiction the principal place of his business or profession is situate, or

(b) the Tax Recovery Officer within whose jurisdiction the assessee resides or any movable or immovable property of the assessee is situate.

(2) If the Tax Recovery Officer to whom a certificate is sent by an Income-tax Officer is not able to recover the entire amount by the sale of the property, movable and immovable, but has information that the assessee has property within the jurisdiction of another Tax Recovery Officer, he may send the certificate to such other Tax Recovery Officer or to a Tax Recovery Officer within whose jurisdiction the assessee resides, and thereupon that Tax Recovery

Officer shall proceed to recover the amount under this Chapter as if the certificate was sent to him by the Income-tax Officer.

224. Validity of certificate, and amendment thereof.—(1) When the Income-tax Officer sends a certificate to a Tax Recovery Officer under Section 222, it shall not be open to the assessee to dispute before the Tax Recovery Officer the correctness of the assessment, and no objection to the certificate on any ground shall be entertained by the Tax Recovery Officer.

(2) Notwithstanding the issue of a certificate to Tax Recovery Officer, the Income-tax Officer shall have power to withdraw or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Tax Recovery Officer.

(3) The Income-tax Officer shall intimate to the Tax Recovery Officer any orders withdrawing or cancelling a certificate or any correction made by him under sub-section (2) of this section or any amendment made under sub-section (4) of Section 225.

225. Stay of proceedings under certificate and amendment or withdrawal thereof.—(1) Notwithstanding that a certificate has been issued to the Tax Recovery Officer for the recovery of any tax, the Income-tax Officer may grant time for the payment of the tax, and thereupon the Tax Recovery Officer shall stay the proceedings until the expiry of time so granted.

(2) Where a certificate for the recovery of tax has been issued, the Income-tax Officer shall keep the Tax Recovery Officer informed of any tax paid or time granted for payment subsequent to the issue of such certificate.

(3) Where the order giving rise to a demand of tax for which a certificate for recovery has been issued has been modified in appeal or other proceeding under this Act, and, as a consequence thereof, the demand is reduced but the order is the subject-matter of further proceeding under this Act, the Income-Tax Officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal or proceeding remains pending.

(4) Where a certificate for the recovery of tax has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the Income-tax Officer shall, when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate or withdraw it, as the case may be.

226. Other modes of recovery.—(1) Notwithstanding the issue of a certificate to the Tax Recovery Officer under Section 222 the Income-tax Officer may recover the tax by any one or more of the modes provided in this section.

(2) If any assessee is in receipt of any income chargeable under the head 'Salaries,' the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears of tax due from such assessee, and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Government or as the Board directs.

Provided that any part of the salary exempt from attachment in execution of a decree of a civil court under Section 60 of the Code of Civil Procedure, 1908 (5 of 1908), shall be exempt from any requisition made under this sub-section.

(3) (i) The Income-tax Officer may, at any time or from time to time, by notice in writing require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee, to pay to the Income-tax Officer either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the assessee jointly with any other person and for the purposes of this sub-section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal.

(iii) A copy of the notice shall be forwarded to the assessee at his last address known to the Income-tax Officer.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice issued to a post office, banking company or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim, respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void against any demand contained in the notice.

(vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof as the case may be, but if it is discovered that statement was false in any material particular, such person shall be personally liable to the Income-tax Officer to the extent of his own liability to the assessee on the date of the notice, or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(vii) The Income-tax Officer may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Income-tax Officer shall grant a receipt for any amount paid in compliance with a notice under this sub-section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

(ix) Any person discharging any liability to the assessee after receipt of a notice under this sub-section shall be personally liable to the Income-tax

Officer to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, whichever is less.

(x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Income-tax Officer, he shall be deemed to be an assessee in default in respect of the amount specified in the notice and further proceedings may be taken against him for realisation of the amount as if it were an arrear of tax due from him, in the manner provided in Sections 222 to 225 and the notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his powers under Section 222.

(4) The Income-tax Officer may apply to the court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax.

(5) The Income-tax Officer may, if so authorised by the Commissioner by general or special order, recover any arrears of tax due from an assessee by distraint and sale of his movable property in the manner laid down in the Third Schedule.

227. Recovery through State Government.—If the recovery of tax in any area has been entrusted to a State Government under clause (1) of article 258 of the Constitution, the State Government may direct, with respect to that area or any part thereof, that tax shall be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.

228. Recovery of Indian tax in Pakistan and Pakistan tax in India—

(1) The Income-tax Officer may forward a certificate under Section 222 to a Collector in Pakistan through the Central Board of Revenue of Pakistan, if the assessee has property in the district of that Collector, and for the purpose of that section, the expression "Tax Recovery Officer" shall include a Collector in Pakistan.

(2) Where a Collector in India receives through the Board a certificate under the signature of an Income-tax Officer in Pakistan, the Collector shall proceed to recover the amount specified therein in the manner in which he would proceed to recover the amount specified in a certificate received from an Income-tax Officer in India, and shall remit any sum so recovered by him to the Income-tax Officer in Pakistan, after deducting his expenses in connection with the recovery proceedings.

(3) The provisions of this section shall remain in force only so long as there are in force similar provisions in the law of Pakistan for the recovery of tax by a Collector in Pakistan on receipt of a certificate from an Income-tax Officer in India.

229. Recovery of penalties, fine, interest and other sums.—Any sum imposed by way of interest, fine, penalty or any other sum payable under the provisions of this Act, shall be recoverable in the manner provided in this Chapter for the recovery of tax.

230. Tax clearance certificates.—(1) Subject to such exception as the Central Government may, by notification in the Official Gazette, specify in this behalf, no person who is not domiciled in India, or who even if domiciled in India at the time of his departure, has in the opinion of an Income-tax authority, no intention of returning to India shall leave the territory of India by land, sea or air unless he first obtains from such authority as may be appointed by the Central Government in this behalf (hereinafter in this section referred to as the "competent authority") a certificate stating that he has no liabilities under this Act, the Excess Profits Tax Act, 1940 (15 of 1940), the Business Profits Tax Act, 1947 (21 of 1947), the Indian Income-tax Act, 1922 (11 of 1922), the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1957 (29 of 1957), or the Gift-tax Act, 1958 (18 of 1958), or that satisfactory arrangements have been made for the payment of all or any such taxes which are or may become payable by that person :

Provided that in the case of a person not domiciled in India the competent authority may, if it is satisfied that such person intends to return to India, issue an exemption certificate either in respect of a single journey or in respect of all journeys to be undertaken by that person within such period as may be specified in the certificate.

(2) If the owner or charterer of any ship or aircraft carrying persons from any place of the territory of India to any place outside India allows any person to whom sub-section (1) applies to travel by such ship or aircraft without first, satisfying himself that such person is in possession of a certificate as required by that sub-section, he shall be personally liable to pay the whole or any part of the amount of tax, if any, payable by such person as the Income-tax Officer, may, having regard to the circumstances of the case, determine.

(3) In respect of any sum payable by the owner or charterer of any ship or aircraft under sub-section (2), the owner or charterer, as the case may be, shall be deemed to be an assessee in default for such sum, and such sum shall be recoverable from him in the manner provided in this Chapter as if it were an arrear of tax.

(4) The Board may make rules for regulating any matter necessary for, or incidental to the purpose of carrying out the provisions of this section.

Explanation.—For the purposes of this section, the expression "owner" and "charterer" include any representative, agent or employee empowered by the owner or charterer to allow persons to travel by the ship or aircraft.

230A. Restrictions on registration of transfers of immovable property in certain cases.—(1) Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of clause (a) to clause (e) of sub-section (1) of Section 17 of the Indian Registration Act, 1908 (16 of 1908), purports to transfer, assign, limit or extinguish the right, title or interest of any person to or in any property (other than agriculture land) valued at more than fifty thousand rupees, no registering officer appointed under that Act shall register any such document, unless the Income-tax Officer certifies that—

(a) such person has either paid or made satisfactory provision for payment of all existing liabilities under this Act, the Excess Profits Tax Act, 1940 (15 of 1940), the Business Profits Tax Act, 1947 (21 of 1947), the Indian

Income-tax Act, 1922 (11 of 1922), the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1957 (29 of 1957) and the Gift-tax Act, 1958 (18 of 1958), or

(b) the registration of the document will not prejudicially affect the recovery of any existing liability under any of the aforesaid Acts.

(2) The application for the certificate required under sub-section (1) shall be made by the person referred to in that sub-section and shall be in such form and shall contain such particulars as may be prescribed.

231. Period for commencing recovery proceedings.—Save in accordance with the provisions of Section 173 or sub-section (7) of Section 220, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the financial year in which the demand is made, or, in the case of a person who is deemed to be an assessee in default under any provision of this Act, after the expiration of one year from the last day of the financial year in which the assessee is deemed to be in default.

Explanation 1.—The period of one year referred to above shall be reckoned—

- (i) where an assessee has been treated as not being in default under sub-section (6) of Section 220, as long as his appeal is undisposed of, from the last day of the financial year in which the appeal is disposed of;
- (ii) where recovery proceedings in any case have been stayed by any order of a court, from the last day of the financial year in which the order is withdrawn;
- (iii) where the date of payment of tax has been extended by an Income-tax authority to another date, from the last day of the financial year in which such other date falls;
- (iv) where the sum payable is allowed to be paid by instalments, from the last day of the financial year in which the last of such instalments is due.

Explanation 2.—A proceeding for the recovery of any sum shall be deemed to have commenced within the meaning of this section, if some action is taken to recover the whole or any part of the sum within the period hereinbefore referred to.

232. Recovery by suit or under other law not affected.—The several modes of recovery specified in this Chapter shall not affect in any way—

- (a) any other law for the time being in force relating to the recovery of the arrears due from the assessee;
- (b) the right of the Government to institute a suit for the recovery of the arrears due from the assessee;

and it shall be lawful for the Income-tax Officer or the Government, as the case may be, to have recourse to any such law or suit, notwithstanding that the tax due is being recovered from the assessee by any mode specified in this Chapter.

E.—Tax payable under provisional assessment

233. Recovery of tax payable under provisional assessment.—For the removal of doubts, it is hereby declared that the provisions of Section 220, except sub-section (6) thereof, and Sections 221 to 229 apply in relation to any tax payable in pursuance of provisional assessment made under Section 141 as if it were a regular assessment made under Section 143 or Section 144.

234. Tax paid by deduction or advance payment.—Tax paid or deemed to have been paid under the provisions of Chapter XVII-B or Chapter XVII-C in respect of any income provisionally assessed under Section 141 shall be deemed to have been paid towards the provisional assessment.

CHAPTER XVIII

RELIEF RESPECTING TAX ON DIVIDENDS IN CERTAIN CASES

235. Relief to shareholders in respect of agricultural income-tax attributable to dividends.—Where a company pays to a shareholder any dividend out of its profits and gains which is assessed to agricultural income-tax by any State Government, the shareholder shall be entitled to a reduction from the tax payable by him under this Act, of a sum equal to -

(a) that proportion of the agricultural income-tax (including super-tax, if any) paid by the company as the amount of the dividend attributable to the profits of the company assessed to agricultural income-tax, reduced by the amount of refund, if any, allowed to him by the State Government; or

(b) where the shareholder—

(i) is not a company, the amount of income-tax payable by him under this Act but not exceeding income-tax calculated at the rate of twenty-seven and a half per cent, and

(ii) is a company, twenty-seven and a half per cent,

on that portion of the dividend which is attributable to the profits of the company assessed to agricultural income-tax.

236. Relief to company in respect of dividend paid out of past taxed profits.—(1) Where in respect of any previous year relevant to the assessment year commencing after the 31st day of March, 1960, an Indian company or a company which has made the prescribed arrangement for the declaration and payment of dividends within India, pays any dividend wholly or partly out of profits and gains actually charged to income-tax for any assessment year ending before the 1st day of April, 1960, and deducts tax therefrom in accordance with the provisions of Chapter XVII-B, credit shall be given to the company against the income-tax, if any, payable by it on the profits and gains of the previous year during which the dividend is paid, of a sum calculated in accordance with the provisions of sub-section (2) and, where the amount of credit so calculated

exceeds the income-tax payable by the company as aforesaid, the excess shall be refunded.

(2) The amount of income-tax to be given as credit under sub-section (1) shall be a sum equal to ten per cent of so much of the dividends referred to in sub-section (1) as are paid out of the profits and gains actually charged to income-tax for any assessment year ending before the 1st day of April, 1960.

Explanation 1.—For the purposes of this section, the aggregate of the dividends declared by a company in respect of any previous year shall be deemed first to have come out of the distributable income of that previous year and the balance, if any, out of undistributed part of the distributable income of one or more previous year immediately preceding that previous year as would be just sufficient to cover the amount of such balance and has not likewise been taken into account for covering such balance of any other previous year.

Explanation 2.—The expression “distributable income of any previous year” shall mean the total income (as computed before making any deduction under Chapter VIA) assessed for that year as reduced by—

- (i) the amount of tax payable by the company in respect to its total income ;
- (ii) the amount of any other tax levied under any law for the time being in force on the company by the Government or by a local authority in excess of the amount, if any, which has been allowed in computing the total income ;
- (iii) any sum with reference to which a deduction is allowable to the company under the provisions of Section 80G ; and
- (iv) in the case of a banking company, the amount actually transferred to a reserve fund under Section 17 of the Banking Companies Act, 1949 (10 of 1949),

and as increased by—

- (a) any profits and gains or receipts of the company not included in its total income (as computed before making any deduction under Chapter VIA) ; and
- (b) any amount attributable to any allowance made in computing the profits and gains of the company for purposes of assessment, which the company has not taken into account in its profit and loss account.

236A. Relief to certain charitable institutions or funds in respect of certain dividends.—(1) In the case of an institution or fund referred to in clause (iii) of sub-section (2) of Section 104, credit shall be given to an institution or fund against the tax, if any, payable by it, of a sum calculated in accordance with the provisions of sub-section (2), in respect of its income from dividends (other than dividends on preference shares) declared or distributed during the previous year relevant to any assessment year beginning on or after the 1st day of April, 1966, by such a company as is referred to in the said clause, and where the amount of credit so calculated exceeds the tax, if any, payable by the said institution or fund, the excess shall be refunded.

(2) The amount to be given as credit under sub-section (1) shall be a sum which bears to the amount of the tax payable by the company under the

provisions of the annual Finance Act with reference to the relevant amount of distributions of dividends by it the same proportion as the amount of the dividends (other than dividends on preference shares) received by the institution or fund from the company bears to the total amount of dividends (other than dividends on preference shares) declared or distributed by the company during the previous year.

Explanation.—In sub-section (2) of this section and in Section 280ZB, the expression “the relevant amount of distribution of dividends” has the meaning assigned to it in the Finance Act of the relevant year.

CHAPTER XIX

REFUNDS

237. Refunds.—If any person satisfies the Income-tax Officer that the amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess.

238. Person entitled to claim refund in certain special cases.—(1) Where the income of any person is included under any provision of this Act in the total income of any person, the latter alone shall be entitled to a refund under this Chapter in respect of such income.

(2) Where through death, incapacity, insolvency, liquidation or other cause, a person is unable to claim or receive any refund due to him, his legal representative or the trustee or guardian or receiver, as the case may be, shall be entitled to claim or receive such refund for the benefit of such person or his estate.

239. Form of claim for refund and limitation.—(1) Every claim for refund under this Chapter shall be made in the prescribed form and verified in the prescribed manner.

(2) No such claim shall be allowed, unless it is made within the period specified hereunder, namely—

- (a) where the claim is in respect of income which is assessable for any assessment year commencing on or before the 1st day of April, 1967, four years from the last day of such assessment year ;
- (b) where the claim is in respect of income which is assessable for the assessment year commencing on the 1st day of April, 1968, three years from the last day of the assessment year ;
- (c) where the claim is in respect of income which is assessable for any other assessment year, two years from the last day of such assessment year.

240. Refund on appeal, etc.—Where as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due

to the assessee, the Income-tax Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf.

241. Power to withhold refund in certain cases.—Where an order giving rise to a refund is the subject-matter of an appeal or further proceeding or where any other proceeding under this Act is pending and the Income-tax Officer is of the opinion that the grant of the refund is likely to adversely affect the revenue, the Income-tax Officer may, with the previous approval of the Commissioner, withhold the refund till such time as the Commissioner may determine.

242. Correctness of assessment not to be questioned.—In a claim under this Chapter, it shall not be open to the assessee to question the correctness of any assessment or other matter decided which has become final and conclusive or ask for a review of the same, and the assessee shall not be entitled to any relief on such claim except refund of tax wrongly paid in excess.

243. Interest on delayed refunds.—(1, If the Income-tax Officer does not grant the refund—

- (a) in any case where the total income of the assessee does not consist solely of income from interest on securities or dividend, within three months from the date on which the total income is determined under this Act, and
- (b) in any other case, within six months from the date on which the claim for refund is made under this Chapter,

the Central Government shall pay the assessee simple interest at nine per cent per annum on the amount directed to be refunded from the date immediately following the expiry of the period of three months or six months aforesaid, as the case may be, to the date of the order granting the refund.

Explanation.—If the delay in granting the refund within the period of six months aforesaid is attributable to the assessee, wholly or in part, the period of the delay attributable to him be excluded from the period for which interest is payable.

(2) Where any question arises as to the period to be excluded for the purpose of calculation of interest under the provisions of this section, such question shall be determined by the Commissioner whose decision shall be final.

244. Interest on refund where no claim is needed.—Where refund is due to the assessee in pursuance of an order referred to in Section 240 and the Income-tax Officer does not grant the refund within a period of six months from the date of such order, the Central Government shall pay to the assessee simple interest at nine per cent per annum on the amount of refund due from the date immediately following the expiry of the period of six months aforesaid to the date on which the refund is granted.

(2) Where a refund is withheld under the provisions of Section 241, the Central Government shall pay interest at the aforesaid rate on the amount of refund ultimately determined to be due as a result of the appeal or further

proceeding for the period commencing after the expiry of six months from the date of the order referred in Section 241 to the date the refund is granted.

245. Set off of refunds against tax remaining payable.—Where under any of the provision of this Act, a refund is found to be due to any person, the Income-tax Officer, Appellate Assistant Commissioner or Commissioner, as the case may be, may in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom the refund is due after giving an intimation in writing to such person of the action proposed to be taken under this section.

CHAPTER XX

APPEALS AND REVISION

A.—Appeals to the Appellate Assistant Commissioner

246. Appealable orders.—Any assessee aggrieved by any of the following orders of an Income-tax Officer may appeal to the Appellate Assistant Commissioner against such order—

- (a) an order against the assessee, being a company, under Section 104 ;
- (b) an order imposing a fine under sub-section (2) of Section 131 ;
- (c) an order against the assessee, where the assessee denies his liability to be assessed under this Act or any order of assessment under sub-section (3) of Section 143 or Section 144, where the assessee objects to the amount of income assessed or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed ;
- (d) an order under Section 146 refusing to reopen an assessment made under Section 144 ;
- (e) an order of assessment, re-assessment or re-computation under Section 147 or Section 150 ;
- (f) an order under Section 154 or Section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections ;
- (g) an order made under Section 163 treating the assessee as the agent of a non-resident ;
- (h) an order under sub-section (2) or sub-section (3) of Section 170 ;
- (i) an order under Section 171 ;
- (j) an order refusing to register a firm under clause (b) of sub-section (1) or under sub-section (5) of Section 185 ;
- (k) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2), of Section 186 ;

- (l) an order under Section 201 ;
- (m) an order under Section 216 ;
- (n) an order under Section 237 ;
- (o) an order imposing a penalty under—
 - (i) Section 140A, or
 - (ia) Section 221, or
 - (ii) Section 270, or
 - (iii) Section 271, or
 - (iv) Section 272, or
 - (v) Section 273 ;
 - (vi) (Omitted).

Explanation.—"Status" means the category under which the assessee is assessed as "individual", "Hindu undivided family" and so on.

247. Appeal by partner.—Where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the Appellate Assistant Commissioner against any order of an Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, but he cannot agitate such matters in any appeal preferred against an order of assessment determining his own total income or loss.

248. Appeal by person denying liability to deduct tax.—Any person having in accordance with the provisions of Sections 195 and 200 deducted and paid tax in respect of any sum chargeable under this Act, other than interest, who denies his liability to make such deduction, may appeal to the Appellate Assistant Commissioner to be declared not liable to make deduction.

249. Form of appeal and limitation.—(1) Every appeal under this Chapter shall be in the prescribed form and shall be verified in the prescribed manner.

(2) The appeal shall be presented within thirty days of the following date, that is to say,—

- (a) where the appeal relates to any tax deducted under sub-section (1) of Section 195, the date of payment of the tax, or
- (b) where the appeal relates to an assessment or penalty, the date or service of the notice of demand relating to the assessment or penalty, or
- (c) in any other case, the date on which intimation of the order sought to be appealed against is served.

(3) The Appellate Assistant Commissioner may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

250. Procedure in appeal.—(1) The Appellate Assistant Commissioner shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Income-tax Officer against whose order the appeal is preferred.

(2) The following shall have the right to be heard at the hearing of the appeal—

- (a) the appellant, either in person or by an authorised representative ;
- (b) the Income-tax Officer, either in person by a representative.

(3) The Appellate Assistant Commissioner shall have the power to adjourn the hearing of the appeal from time to time.

(4) The Appellate Assistant Commissioner may, before disposing of any appeal make such further inquiry as he thinks fit, or may direct the Income-tax Officer to make further inquiry and report the result of the same to the Appellate Assistant Commissioner.

(5) The Appellate Assistant Commissioner may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Appellate Assistant Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

(6) The order of the Appellate Assistant Commissioner disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

(7) On the disposal of the appeal, the Appellate Assistant Commissioner shall communicate the order passed by him to the assessee and to the Commissioner.

251. Powers of the Appellate Assistant Commissioner.—(1) In disposing of an appeal, the Appellate Assistant Commissioner shall have the following powers—

(a) in an appeal against an order of assessment, he may confirm, reduce enhance or annul the assessment ; or he may set aside the assessment and refer the case back to the Income-tax Officer for making a fresh assessment in accordance with the directions given by the Appellate Assistant Commissioner and after making such further inquiry as may be necessary, and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment ;

(b) in an appeal against an order imposing a penalty he may confirm or cancel such order or vary it so as either to enhance or reduce the penalty ;

(c) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The Appellate Assistant Commissioner shall not enhance an assessment or penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation.—In disposing of an appeal, the Appellate Assistant Commissioner may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Appellate Assistant Commissioner by the appellant.

B.—Appeals to the Appellate Tribunal

252. Appellate Tribunal.—(1) The Central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

(2) A judicial member shall be a person who has for at least ten years held a civil judicial post or who has been a member of the Central Legal Service (not below Grade III) for at least three years or who has been in practice as an advocate for at least ten years, and an accountant member shall be a person who has for at least ten years been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 (38 of 1949), or as a registered accountant under any law formerly in force or partly as a registered accountant and partly as a chartered accountant or who has served as an Assistant Commissioner of Income tax for at least three years.

(3) The Central Government shall ordinarily appoint a judicial member of the Appellate Tribunal to be the President thereof.

253. Appeals to the Appellate Tribunal.—(1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

- (a) an order passed by an Appellate Assistant Commissioner under sub-section (2) of Section 131, Section 154, Section 250 or Section 271 or
- (b) an order passed by an Inspecting Assistant Commissioner under Section 154, sub-section (2) of Section 274 or
- (c) an order passed by a Commissioner under Section 263 or under Section 285A or an order passed by him under Section 154 amending his order under Section 263.

(2) The Commissioner may, if he objects to any order passed by an Appellate Assistant Commissioner under Section 154 or Section 250, direct the Income-tax Officer to appeal to the Appellate Tribunal against the order.

(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner as the case may be.

(4) The Income-tax Officer or the assessee as the case may be on receipt of notice that an appeal against the order of the Appellate Assistant Commissioner has been preferred under sub-section (1) or sub-section (2) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross-objections verified in the prescribed manner, against any part of the order of the Appellate Assistant Commissioner, and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4) if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, except in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objection referred to in sub-section (4), be accompanied by a fee of rupees one hundred.

254. Orders of Appellate Tribunal.—(1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(1A) (a) Where the appellant objects to the fair market value of a capital asset adopted under Section 52, the Appellate Tribunal may, and if the appellant so requires, shall refer the question of the disputed value to the arbitration of two valuers, one of whom shall be nominated by the appellant and the other by the respondent and the Appellate Tribunal shall, so far as that question is concerned pass its orders under sub-section (1) conformably to the decision of the valuers :

Provided that where the appellant or the respondent does not nominate any valuer within the time specified by the Appellate Tribunal or within such further time as the Appellate Tribunal may allow, the Appellate Tribunal may nominate a valuer on his behalf :

Provided further that if there is a difference of opinion between the two valuers the matter shall be referred to a third valuer nominated by agreement, or failing agreement, by the Appellate Tribunal and the decision of that valuer on the question of valuation shall be final.

(b) The valuers to whom a reference under this sub-section has been made by the Appellate Tribunal shall communicate their decision to the Appellate Tribunal within six months of the date of such reference or within such further time as that Tribunal may allow :

Provided that if the decision of the valuers is not communicated within the period aforesaid, the Appellate Tribunal may order that the reference made under this sub-section shall be deemed to be withdrawn and proceed to dispose of the case on the evidence before it, including the report of the valuers if any such report has been submitted.

(c) The extent to which the costs of arbitration proceedings (including a case where a reference is deemed to be withdrawn) shall be borne by the appellant or the respondent shall be at the discretion of the Appellate Tribunal.

(d) The valuers may, in disposing of any matter referred to them for arbitration under this sub-section, hold or cause to be held such enquiry as they think fit and after giving the appellant and the respondent an opportunity of being heard, make such decision as they think fit and shall communicate such decision in writing to the Appellate Tribunal.

(e) The valuers appointed under this sub-section, while acting as such, shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—

- (i) summoning and enforcing the attendance of any person and examining him on oath ;
- (ii) requiring the discovery and production of documents ;
- (iii) receiving evidence on affidavit ; and
- (iv) issuing commission for examination of witnesses or documents.

(f) Nothing in the Arbitration Act, 1940 (10 of 1940) shall apply to arbitrations under this sub-section.

Explanation.—In this sub-section “valuer” means a valuer appointed under Section 4 of the Estate Duty Act, 1953 (34 of 1953).

(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Income-tax Officer :

Provided that an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this sub-section unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.

(3) The Appellate Tribunal shall send a copy of any orders passed under this section to the assessee and to the Commissioner.

(4) Save as provided in Section 256, orders passed by the Appellate Tribunal on appeal shall be final.

255. Procedure of Appellate Tribunal.—(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof.

(2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one judicial member and one accountant member

(3) The President or any other member of the Appellate Tribunal authorised in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the Income-tax Officer in the case does not exceed twenty-five thousand rupees, and the President may, for the disposal of any particular case, constitute a special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.

(4) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided they shall state the point or points on which they differ, and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

(5) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of the functions including the place at which the Benches shall hold their sittings.

(6) The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the Income-tax authorities referred to in Section 131, and any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898).

C.—Reference to High Court

256. Statement of case to the High Court.—(1) The assessee or the Commissioner may, within sixty days of the date upon which he is served with notice of an order under Section 254, by application in the prescribed form, accompanied where the application is made by the assessee by a fee of rupees one hundred, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application draw up a statement of the case and refer it to the High Court :

Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

(2) If on an application made under sub-section (1), the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, within six months from the date on which he is served with notice of such refusal, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of decision of the Appellate Tribunal, require the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition, the Appellate Tribunal shall state the case and refer it accordingly.

(3) Where in the exercise of its powers under sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may within thirty days from the date on which he receives notice of such refusal, withdraw his application, and if he does so, the fee paid shall be refunded.

257. Statement of case to Supreme Court in certain cases.—If on an application made under Section 256 the Appellate Tribunal is of the opinion that, on account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court.

258. Power of the High Court or Supreme Court to require statement to be amended.—If the High Court or the Supreme Court is not satisfied that the statements in a case referred to it are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Appellate Tribunal for the purpose of making such additions thereto or alterations therein as it may direct in that behalf.

259. Case before High Court to be heard by not less than two judges.—

(1) When any case has been referred to the High Court under Section 256, it shall be heard by a Bench of not less than two judges of the High Court, and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

(2) Where there is no such majority, the judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other judges of the High Court, and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

260. Decision of High Court or Supreme Court on the case stated.—

(1) The High Court or the Supreme Court upon hearing any such case shall decide the questions of law raised therein, and shall deliver its judgment thereon containing the grounds on which such decision is founded and a copy of the judgment shall be sent under the seal of the court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(2) The costs of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference shall be in the discretion of the Court.

D.—Appeals to the Supreme Court

261. Appeals to Supreme Court.—An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a reference made under Section 255 in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

262. Hearing before Supreme Court.—(1) The provision of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under Section 261 as they apply in the case of appeals from decrees of the High Court :

Provided that nothing in this section shall be deemed to affect the provisions of sub-section (1) of Section 260 or Section 265.

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in Section 260 in the case of a judgment of the High Court.

E.—Revision by the Commissioner

263. Revision of orders prejudicial to revenue.—(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Income-tax Officer is erroneous in so far as it is prejudicial to the interest of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the

circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

(2) No order shall be made under sub-section (1)—

(a) to revise an order of the reassessment made under Section 147, or

(b) after the expiry of two years from the date of the order sought to be revised.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed any time in the case of an order which has been passed in consequence of or to give effect to any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be re-heard under the proviso to Section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

264. Revision of other orders.—(1) In the case of any order other than an order to which Section 263 applies passed by an authority subordinate to him, the Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.

(2) The Commissioner shall not of his own motion revise any order under this section if the order has been made more than one year previously.

(3) In the case of an application for revision under this section by the assessee, the application must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier;

Provided that the Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

(4) The Commissioner shall not revise any order under this section in the following cases—

(a) where appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or in the case of an appeal to the Appellate Tribunal, the assessee has not waived his right of appeal; or

(b) where the order is pending on an appeal before the Appellate Assistant Commissioner; or

(c) where the order has been made the subject of an appeal to the Appellate Tribunal.

(5) Every application by an assessee for revision under this section shall be accompanied by a fee of twenty-five rupees.

Explanation 1.—An order by the Commissioner declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to the assessee.

Explanation 2.—For the purposes of this section, the Appellate Assistant Commissioner shall be deemed to be an authority subordinate to the Commissioner.

F.—General

265. Tax to be paid notwithstanding reference, etc.—Notwithstanding that a reference has been made to the High Court or the Supreme Court, or an appeal has been preferred to the Supreme Court, tax shall be payable in accordance with the assessment made in the case.

266. Execution for costs awarded by Supreme Court.—The High Court may, on petition made for the execution of the order of the Supreme Court in respect of any costs awarded thereby, transmit the order for execution to any court subordinate to the High Court.

267. Amendment of assessment on appeal.—Where as the result of an appeal under Section 246 or Section 253, any change is made in the assessment of a firm or a body of individuals or an association of persons or a new assessment of a firm or a body of individuals or an association of persons is ordered to be made, the Appellate Assistant Commissioner or the Appellate Tribunal, as the case may be, shall pass an order authorising the Income-tax Officer either to amend the assessment made on any partner of the firm or any member of the body or association or make a fresh assessment on any partner of the firm or on any member of the body or association.

268. Exclusion of time taken for copy.—In computing the period of limitation prescribed for an appeal or an application under this Act, the day on which the order complained of was served and, if the assessee was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order, shall be excluded.

269. Definition of "High Court".—In this Chapter, "High Court" means,—

- (i) in relation to any State, the High Court for that State ;
- (ii) in relation to the Union territory of Delhi, the High Court of Delhi ;
- (iia) in relation to the Union territory of Himachal Pradesh, the High Court of Punjab and Haryana up to and inclusive of the 30th April, 1967, and the High Court of Delhi thereafter.
- (iii) in relation to the Union territories of Manipur and Tripura, the High Court of Assam ;
- (iv) in relation to the Union territory of the Andaman and Nicobar islands, the High Court at Calcutta ;

- (v) in relation to the Union territory of the Laccadive, Minicoy and Amindivi islands, the High Court of Kerala ;
 - (va) in relation to the Union territory of Chandigarh, the High Court of Punjab and Haryana ;
 - (vi) in relation to the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu, the High Court at Bombay ; and
 - (vii) in relation to the Union territory of Pondicherry, the High Court at Madras.
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CHAPTER XXI

PENALTIES IMPOSABLE

270. Failure to furnish information regarding securities, etc.—If any person without reasonable excuse fails to comply with a notice issued under sub-section (6) of Section 94, the Income-tax Officer may direct that such person shall pay by way of penalty a sum not exceeding five hundred rupees and by way of further penalty a like amount for every day after the infliction of such penalty during which the failure continues.

271. Failure to furnish returns, comply with notice, concealment of income etc.—(1) If the Income-tax Officer or the Appellate Assistant Commissioner in the course of any proceedings under this Act, is satisfied that any person—

(a) has without reasonable cause failed to furnish the return of total income which he was required to furnish under sub-section (1) of Section 139 or by notice given under sub-section (2) of Section 139 or Section 148 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by sub-section (1) of Section 139 or by such notice, as the case may be, or

(b) has without reasonable cause failed to comply with a notice under sub-section (1) of Section 142 or sub-section (2) of Section 143, or

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income,

he may direct that such person shall pay by way of penalty,—

(i) in the cases referred to in clause (a), in addition to the amount of the tax, if any, payable by him, a sum equal to two per cent of the tax for every month during which the default continued, but not exceeding in the aggregate fifty per cent of the tax ;

(ii) in the cases referred to in clause (b), in addition to any tax payable by him, a sum which shall not be less than ten per cent, but which shall not exceed fifty per cent of the amount of the tax, if any, which would have been avoided if the income returned by such person had been accepted as the correct income ;

(iii) in the cases referred to in clause (c) in addition to any tax payable by him, a sum which shall not be less than but which shall not exceed twice the amount of the income in respect of which the particulars have been concealed or inaccurate particulars have been furnished.

Explanation.—Where the total income returned by any person is less than eighty per cent of the total income (hereinafter in this Explanation referred to as the correct income) as assessed under Section 143 or Section 144 or Section 147 (reduced by the expenditure incurred bona fide by him for the purpose of making or earning any income included in the total income but which has been disallowed as a deduction), such person shall, unless he proves that failure to return the correct income did not arise from any fraud or any gross or wilful neglect on his part, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income for the purposes of clause (c) of this sub-section.

(2) When the person liable to penalty is a registered firm or an unregistered firm which has been assessed under clause (b) of Section 183, then notwithstanding anything contained in the other provisions of this Act, the penalty imposable under sub-section (1) shall be the same amount as would be imposable on that firm if that firm were an unregistered firm.

(3) Notwithstanding anything contained in this section,—

(a) no penalty for failure to furnish the return of his total income under sub-section (1) of Section 139 shall be imposed under sub-section (1) on an assessee whose total income does not exceed the maximum amount not chargeable to tax in his case by one thousand five hundred rupees.

(b) where a person has failed to comply with a notice under sub-section (2) of Section 139 or Section 148 and proves that he has no income liable to tax the penalty imposable under sub-section (1) shall not exceed twenty-five rupees;

(c) no penalty shall be imposed under sub-section (1) upon any person assessable under clause (i) of sub-section (1) of Section 160, read with Section 161, as the agent of a non-resident for failure to furnish the return under sub-section (1) of Section 139.

(4) If the Income-tax Officer or the Appellate Assistant Commissioner in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the instrument of partnership on the basis of which the firm has been registered under this Act, and that any partner has thereby returned his income below its real amount, he may direct that such partner shall, in addition to the tax, if any, payable by him, pay by way of penalty a sum not exceeding one and a half times the amount of tax which has been avoided, or would have been avoided if the income returned by such partner had been accepted as his correct income, and no refund or other adjustment shall be claimable by any other partner by reason of such direction.

(4A) Notwithstanding anything contained in clause (i) or clause (ii) of sub-section (1), the Commissioner may, in his discretion—

(i) reduce or waive the amount of minimum penalty imposable on a person under clause (i) of sub-section (1) for failure, without reasonable cause

to furnish the return of total income which such person was required to furnish under sub-section (1) of Section 139, or

(ii) reduce or waive the amount of minimum penalty imposable on a person under clause (iii) of sub-section (1), if he is satisfied that such person—

(a) in the case referred to in clause (i) of this sub-section has, prior to the issue of notice to him under sub-section (2) of Section 139, voluntarily and in good faith, made full disclosure of his income; and in the case referred to in clause (ii) of this sub-section has, prior to the detection by the Income-tax Officer, of the concealment of particulars of income in respect of which the penalty is imposable, or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made full and true disclosure of such particulars;

(b) has co-operated in any enquiry relating to the assessment of such income; and

(c) has either paid or made satisfactory arrangements for payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year:

Provided that if in a case the minimum penalty imposable under clause (i) or, as the case may be, clause (iii) of sub-section (1) in respect of the relevant assessment year, or where such disclosure relates to more than one assessment year, the aggregate of the minimum penalty imposable in respect of those years, exceeds a sum of rupees fifty thousand, no order reducing or waiving the penalty shall be made by the Commissioner unless the previous approval of the Board had been obtained.

(4B) An order under sub-section (4A) shall be final and shall not be called in question before any court of law or any other authority.

272. Failure to give notice of discontinuance.—Where any person fails to give the notice of discontinuance of his business or profession as required by sub-section (4) of Section 176, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty which shall not be less than ten per cent of the tax but which shall not exceed the amount of tax subsequently assessed on him in respect of any income of the business or profession up to the date of its discontinuance.

273. False estimate of, or failure to pay, advance tax.—If the Income-tax Officer, in the course of any proceeding in connection with the regular assessment of the assessment year commencing on the 1st day of April, 1970 or any subsequent assessment year, is satisfied that any assessee—

(a) has furnished under Section 212 an estimate of the advance tax payable by him which he knew or had reason to believe to be untrue, or

(b) has without reasonable cause failed to furnish an estimate of the advance tax payable by him in accordance with the provisions of sub-section (3) of Section 212, or

(c) has without reasonable cause failed to furnish an estimate of the advance tax payable by him in accordance with the provisions of sub-section (3A) of Section 212,

he may direct that such person shall, in addition to the amount of tax if any, payable by him pay by way of penalty a sum—

(i) which, in the case referred to in clause (a), shall not be less than ten per cent but shall not exceed one and a half times the amount by which the tax actually paid during the financial year immediately preceding the assessment year under the provisions of Chapter XVII-C falls short of—

(1) seventy-five per cent, of the assessed tax as defined in sub-section (5) of Section 215, or

(2) where a notice under Section 210 was issued to the assessee, the amount payable thereunder,

(ii) which, in the case referred to in clause (b), shall not be less than ten per cent but shall not exceed one and a half times of seventy-five per cent of the assessed tax as defined in sub-section (5) of Section 215; and

(iii) which, in the case referred to in clause (c), shall not be less than ten per cent but shall not exceed one and a half times the amount by which the tax payable under the notice issued to the assessee under Section 210 falls short of seventy-five per cent of the assessed tax as defined in sub-section (5) of Section 215.

274. Procedure.—(1) No order imposing a penalty under this Chapter shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard.

(2) Notwithstanding anything contained in clause (iii) of sub-section (1) of Section 271, if in a case falling under clause (c) of that sub-section, the minimum penalty imposable exceeds a sum of rupees one thousand, the Income-tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty.

(3) An Appellate Assistant Commissioner on making an order under this Chapter imposing a penalty, shall forthwith send a copy of the same to the Income-tax Officer.

275. Bar of limitation for imposing penalty.—No order imposing a penalty under this Chapter shall be passed after the expiration of two years from the date of the completion of the proceedings in the course of which the proceedings for the imposition of penalty have been commenced.

Explanation.—In computing the period of limitation for the purpose of this section, the time taken in giving an opportunity to the assessee to be reheard under proviso to Section 129 and any period during which a proceeding under this Chapter for the levy of penalty is stayed by an order or injunction of any court shall be excluded.

CHAPTER XXII

OFFENCES AND PROSECUTIONS

275A. Contravention of order made under sub-section (3) of Section 132.—Whoever contravenes any order referred to in sub-section (3) of Section 132 shall

be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine.

276. Failure to make payments or deliver returns or statements or allow inspection.—If a person fails without reasonable cause or excuse—

- (a) to grant inspection or allow copies to be taken in accordance with the provisions of Section 134 ;
- (b) to furnish in due time any of the returns or statements mentioned in Section 133, sub-section (2) of Section 139, Section 206, Section 285 or Section 286 ;
- (c) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (1) of Section 142, such accounts and documents as are referred to in the notice ;
- (d) to deduct and pay tax as required under sub-section (2) of Section 226 ; or
- (e) to furnish a certificate required by Section 203,

he shall be punishable with fine which may extend to ten rupees for every day during which the default continues.

276A. Failure to comply with the provision of sub-section (1) and (3) of Section 178.—If a person, without reasonable cause or excuse,—

- (i) fails to give the notice in accordance with sub-section (1) of Section 178 ; or
- (ii) fails to set aside the amount as required by sub-section (3) of that section ; or
- (iii) parts with any of the assets of the company or the properties in his hands in contravention of the provisions of the aforesaid sub-section,

he shall be punishable with rigorous imprisonment for a term, which may extend to two years :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months.

276B. Failure to deduct and pay tax.—If a person, without reasonable cause or excuse, fails to deduct or after deducting fails to pay the tax as required by or under the provisions of sub-section (9) of Section 80E or Chapter XVII-B, he shall be punishable with rigorous imprisonment for a term which may extend to six months, and shall also be liable to fine which shall be not less than a sum calculated at the rate of fifteen per cent per annum on the amount of such tax is actually paid.

277. False statement in declaration.—If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with rigorous imprisonment for a term which may extend to two years :

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months.

278. Abetment of false return, etc.—If a person abets or induces in any manner another person to make and deliver an account, statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe to be true, he shall be punishable with rigorous imprisonment for a term which may extend to two years.

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months.

279. Prosecution to be at the instance of Commissioner.—(1) A person shall not be proceeded against for an offence under Section 275A or Section 276 or Section 276A or Section 276B or Section 277 or Section 278 except at the instance of the Commissioner

(1A) A person shall not be proceeded against for an offence under Section 277 in relation to the assessment for an assessment year in respect of which the penalty imposable upon him under clause (iii) of sub-section (1) of Section 271 has been reduced or waived by an order sub-section (4A) of that section.

(2) The Commissioner may either before or after the institution of proceedings compound any such offence.

(3) Where any proceeding has been taken against any person under sub-section (1), any statement made or account or other document produced by such person before any of the Income-tax authorities specified in clauses (a), (b), (c), (d) and (e) of Section 116 shall not be inadmissible as evidence for the purpose of such proceeding merely on the ground that such statement was made or such account or other document was produced in the belief that the penalty imposable would be reduced or waived under sub-section (4A) of Section 271 or that the offence in respect of which such proceeding was taken would be compounded.

280. Disclosure of particulars by public servants.—(1) If a public servant furnishes any information or produces any documents in contravention of the provisions of sub-section (2) of Section 138, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

(2) No prosecution shall be instituted under this section except with the previous sanction of the Central Government

CHAPTER XXIIA

ANNUITY DEPOSITS

280A. Persons to whom this Chapter applies.—The provisions of this Chapter shall apply to every person, being—

- (i) an individual, who is a citizen of India,
- (ii) a Hindu undivided family,
- (iii) an unregistered firm,
- (iv) an association of persons or a body of individuals, whether incorporated or not (other than a company or a co-operative society), and
- (v) an artificial juridical person referred to in sub-clause (vii) of clause (31) of Section 2 (other than a corporation established by a Central, State or Provincial Act) :

Provided that such person is a resident.

280B. Definitions.—In this Chapter, unless the context otherwise requires,—

(1) “adjusted total income”—

(a) in relation to the assessment year commencing on the 1st day of April, 1964, means the amount of total income computed without making any allowance under Section 280-O and reduced by the aggregate of the following amounts, if any, included therein, namely—

(i) any income chargeable under the head “Salaries” ;
(ii) if the depositor is a partner of an unregistered firm which is liable to make an annuity deposit for the relevant assessment year, the amount of his share in the profits and gains of the firm computed in the manner laid down in Section 67 ;

(iii) if the depositor is a member of an association of persons or a body of individuals (other than a Hindu undivided family or a firm) which is liable to make an annuity deposit for the relevant assessment year, the amount which he is entitled to receive from the association or body :

(iv) any compensation or other payment referred to in clause (ii) of Section 28 ; and

(v) any income chargeable under the head “Capital gains”.

(b) in relation to the assessment year commencing on the 1st day of April, 1965, or any subsequent assessment year, means the amount of total income computed without making any allowance under Section 280-O and reduced by the aggregate of the following amounts, if any, included therein, namely—

(i) any sum which under the provisions of sub-clause (vii) of clause (1) of Section 17 is included in salary ;

(ii) any income chargeable under the head “Salaries” in respect of which the assessee can make an application for the grant of relief under sub-section (1) of Section 89 ;

(iii) the amount referred to in sub-clause (a) (ii) or sub-clause (a) (iii) of this clause ;

(iv) any compensation or other payment referred to in clause (ii) of Section 28 ; and

(v) any income chargeable under the head “Capital gains” ;

(vi) any annuity due, or commuted value of any annuity paid under the provisions of Section 280D ;

(vii) any income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India.

(2) "advance deposit" means the annuity deposit required to be made in advance in accordance with the provisions of Section 280-I ;

(3) "advance tax" shall have the same meaning as in Section 207 ;

(4) "annuity" means any annual instalment of principal and interest thereon payable by the Central Government under the provisions of Section 280D ;

(5) "annuity deposit" means a deposit of money required to be made under the provisions of this Chapter ;

(6) "depositor" means a person to whom the provisions of this Chapter apply.

280C. Requirement as to annuity deposit.—(1) Where, in relation to any assessment year not being an assessment year commencing on or after 1st day of April 1969 any Central Act enacts that any person to whom the provisions of this Chapter apply shall make for any assessment year an annuity deposit with the Central Government at any rate or rates such person shall make such deposit at that rate or those rates in accordance with, and subject to the provisions of, this Chapter in respect of the adjusted total income of the previous year or previous years, as the case may be.

(2) In respect of the adjusted total income of the previous year of deposit is to be made under sub-section (1), such deposit shall—

(i) in respect of the adjusted total income of the previous year or previous years relevant to the assessment year commencing on the 1st day of April, 1966, or any earlier assessment year, be made in advance in accordance with the provisions of Section 280-I ;

(ii) in respect of the adjusted total income of the previous year or previous years relevant to assessment year commencing on the 1st day of April, 1967, or any subsequent assessment year not being an assessment year commencing on or after the 1st day of April 1969 be made by such person at any time (in one sum or in instalment of his choice) during the financial year immediately preceding such assessment year at the rate or rates specified in this behalf in the annual Finance Act :

Provided that the Income-tax Officer may, in such cases, under such circumstances and subject to such conditions as may be specified in a scheme framed under Section 280W, allow a depositor to make a deposit or a further deposit at any time after the expiry of the financial year referred to in clause (ii) and any deposit or further deposit so made shall be deemed to be an annuity deposit for the relevant assessment year for the purposes of this Chapter.

280D. Repayment.—Subject to the provisions of this Chapter and any scheme framed thereunder, the Central Government shall repay to the depositor the annuity deposit made or recovered in any year in ten annual equated instalments of principal and interest at such rate as may be notified by the Central Government in the Official Gazette :

Provided that nothing in this section shall prevent the payment of any annuity at such commuted value thereof as may be provided in a scheme framed under Section 280W, in any case in which the authority empowered to make such payment is satisfied that genuine hardship will be caused unless such payment is made.

280E. Computation of advance deposit.—(Omitted)

Explanation 2.—The provisions of this section and of Section 280F to 280-I shall not apply in respect of the financial year commencing on the 1st day of April, 1965 or any subsequent financial year.

Sections 280F, 280G, 280H, 280-I, 280J, and 280K are omitted.

280L. Special provision for the assessment year 1964-65.—If the total income of a depositor for the previous year relevant to the assessment year commencing on the 1st day of April, 1964 (such total income being computed without making any allowance under Section 280-O) exceeds fifteen thousand rupees and he does not furnish a return under Section 139 before the 1st day of March, 1965, and no regular assessment under Section 144 is made before the said 1st day of March, he shall send to the Income-tax Officer—

- (i) an estimate of the adjusted total income of the said previous year ;
- (ii) an estimate of annuity deposit to be made by him calculated in the manner laid down in Section 280E ;

and shall make such deposit as accords with estimate on or before the 31st day of March, 1965.

(2) An estimate under this section shall be sent in the prescribed form and verified in the prescribed manner.

280M. Recomputation of annuity deposit and adjustment of excess or deficiency.—(1) Where as a result of an order of reassessment or recomputation under Section 147 or as a result of an order under Section 154 or Section 155 or Section 186 or Section 250 or Section 254 or Section 260 or Section 262 or Section 263 or Section 264, the total income of a depositor is enhanced or reduced or the status under which he is assessed, is altered, or in the case of a firm, registration is granted or cancelled, the Income-tax Officer shall compute or recompute the amount of annuity deposit to be made by such depositor.

(2) Where any depositor has deposited any amount for any assessment year which he is not liable to deposit under the provisions of this Chapter or which is in excess of the amount required to be deposited under the said provisions for that year, then the entire amount or excess amount, as the case may be, may be refunded, adjusted or otherwise dealt with in such manner and having regard to such factors as may be specified in a scheme framed under Section 280W.

280N. Refund of annuity deposit made by a firm assessed under clause (b) of Section 183.—Where any unregistered firm is assessed under clause (b) of Section 183 for any assessment year, such firm shall not be liable to make an annuity deposit for that assessment year and annuity deposit made by it for that assessment year, if any, shall be refunded, adjusted or otherwise dealt with in

such manner and having regard to such factors as may be specified in a scheme framed under Section 280W.

280-O. Annuity deposit allowed as deduction in computing total income.—

(1) Notwithstanding anything to the contrary contained in the provisions of this Act relating to the computation of income chargeable under any head of income, the annuity deposit required to be made under this Chapter shall, subject to the provisions of sub-section (2), be allowed as a deduction in computing the total income assessable for the assessment year in respect of which the annuity deposit is required to be made :

Provided that where in relation to the assessment year commencing on the 1st day of April, 1967 or any subsequent assessment year not being an assessment year commencing on or after the 1st day of April, 1969 no annuity deposit has been made during the financial year immediately proceeding such assessment year [or such further period as may be allowed by the Income-tax Officer under the proviso to clause (ii) of sub-section (2) of Section 280C], or the amount of annuity deposit made during the financial year or further period aforesaid falls short of the annuity deposit required to be made under this Chapter, the amount to be allowed as a deduction under this sub-section shall be nil or, as the case may be, limited to the amount of the deposit so made and the provisions of this section shall have effect as if references therein to the annuity deposit required to be made were reference to the amount of annuity deposit actually so made.

(2) If the adjusted total income of the depositor includes any income chargeable under the head "Salaries" the allowance under sub-section (1) shall be made in computing the income under that head and if there is no income chargeable under that head or the annuity deposit required to be made exceeds such earned income, the whole or the balance of the annuity deposit required to be made shall be allowed as a deduction in computing earned income chargeable under any other head, and if there is no earned income chargeable under any other head or the whole or the balance of the annuity deposit required to be made exceeds such earned income the whole or the balance of the annuity deposit required to be made shall be allowed as a deduction in computing any other income under any head.

Explanation.—In this sub-section, the expression "earned income" has the meaning assigned to it in the Finance Act of the relevant year.

280P. Annuity deposit deductible in computing income under the head "Salaries" for purposes of Section 192—Any person responsible for paying any income chargeable under the head "Salaries" to a resident may, at the time of payment, deduct income-tax under Section 192 as if the estimated income referred to in sub-section (1) of that section had been reduced by the amount of annuity deposit, if any, required to be made by the assessee in respect of such income, whether such annuity deposit has or has not been made :

Provided that nothing contained in this section shall apply in the case of a person whose estimated income aforesaid does not exceed twenty-five thousand rupees unless such person has, not later than the 31st day of December of the financial year, made a declaration, in writing before the person responsible for paying the income chargeable under the head "Salaries", of his intention to

make the annuity deposit under the provisions of this Chapter and specifying the amount which he so intends to deposit; and where such declaration has been made, the provisions of this section apply as if the reference therein to the amount of annuity deposit required to be made were a reference to the amount specified in such declaration.

280Q. Rounding off.—The amount of any deposit to be made under this Chapter shall be rounded off to the nearest multiple of ten rupees and for this purpose any part of a rupee consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten and if the last figure is less than five, the amount shall be reduced to the next lower amount which is multiple of ten.

280R. (Omitted).

280S. Other interest and penalty provisions of the Act not to apply.—Notwithstanding anything to the contrary contained in this Act, the provisions of this Act other than those contained in this Chapter or any scheme framed thereunder, relating to interest payable by the Central Government on refund and interest payable by the assessee in default or those relating to imposition of penalty shall not apply in relation to any sum due under this Chapter.

280T. (Omitted).

280U. Special provisions for authors, playwrights, artists, musicians and actors.—Any individual, being an author, playwright, artist, musician or actor, may in addition to the amount of annuity deposit required to be made by him in respect of any assessment year, make further deposit of an amount not exceeding twenty-five per cent of the income from such profession included in his total income assessable for that assessment year, and if he does so, the further deposit made by him, shall, for the purposes of this Chapter, be included in the annuity deposit required to be made by him.

280V. Special provisions relating to gratuity.—Where the total income of a depositor assessable for any assessment year includes any gratuity chargeable under the head "Salaries", he may, in addition to the amount of annuity deposit required to be made by him in respect of that assessment year, make a further deposit of an amount not exceeding fifty per cent of the amount of such gratuity and if he does so, the further deposit made by him, shall for the purposes of this Chapter, be included in the annuity deposit required to be made by him.

280W. Annuity Deposit Scheme.—(1) The Central Government shall, by notification in the Official Gazette, frame one or more scheme or schemes to be called annuity Deposit Scheme or Schemes in relation to deposits under this Chapter.

(2) A scheme under sub-section (1) may provide for—

(a) the manner in which the annuity deposits shall be made;

(aa) the cases in which, the circumstances under which and the conditions subject to which the Income-tax Officer may, under the proviso to clause (ii) of sub-section (2) of Section 280C, allow a depositor to

make a deposit or a further deposit after the expiry of the financial year immediately preceding the assessment year ;

- (b) the manner in which, and intervals at which, the annuities shall be paid and the manner in which the amount of annuity deposit which is not required to be deposited under the provisions of this Chapter or the excess or deficiency of annuity deposit, as the case may be, may be refunded, adjusted or otherwise dealt with the factors that may be taken into account in this connection ;
- (c) the authority or authorities by or through whom such deposits may be collected or by whom annuities may be issued ;
- (d) the documents to be issued to persons by whom deposits have been made as evidence of such deposits ;
- (e) the accounts to be maintained with respect to such deposits and annuities and the officers by whom such accounts shall be maintained ;
- (f) the nomination of any person to receive the annuity or any other sum due under this Chapter to any depositor in the event of his death and the cancellation or change of such nomination ;
- (g) the issue of duplicate of any document issued and evidences of any such deposit in the event of loss or destruction of the original and the fee on the payment of which such duplicate may be issued ; and
- (h) any other matter which may be necessary or proper for the effective implementation of the scheme.

(3) The Central Government, may by notification in the Official Gazette, add to, amend, vary or rescind any scheme framed under this Chapter.

(4) Any scheme framed under this Chapter shall be laid, as soon as may be, after it is framed before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and, if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in any provision of the scheme or both Houses agree that any provision in the scheme should not be made, that provision of the scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that provision.

280X. Liability to pay additional income-tax in certain cases.—(1) Where in relation to the assessment year commencing on the 1st day of April, 1967 or any subsequent assessment year, (not being an assessment year commencing on or after the 1st day of April, 1969) a depositor does not make any annuity deposit during the financial year immediately preceding such assessment year or such further period as may be allowed by the Income-tax Officer under the proviso to clause (ii) of sub-section (2) of Section 280C, or the amount of annuity deposit made by him during the financial year or further period aforesaid falls short of the annuity deposit required to be made (which short-fall is, hereafter, in this section, referred to as deficiency), he shall, in addition to the income-tax payable by him for that assessment year, be liable to a further amount of income-tax calculated in the manner specified in sub-section (2) :

Provided that nothing contained in this section shall apply in a case where—

- (a) such depositor is more than sixty years of age on the last day of the previous year relevant to the assessment year ; or
- (b) (Omitted).
- (c) the annuity deposit required to be made does not exceed one hundred rupees ; or
- (d) the deficiency does not exceed an amount equal to ten per cent of the annuity deposit required to be made or one hundred rupees, whichever is higher.

(2) The further amount of income-tax referred to in sub-section (1) shall be—

(i) in a case where the depositor does not make any annuity deposit, a sum equal to fifty per cent of the amount by which the amount of annuity deposit required to be made in respect of that assessment year exceeds the difference between—

- (a) the tax payable by him on his total income, and
- (b) the tax that would have been payable had his total income been reduced by the amount of annuity deposit required to be made ;

(ii) in a case where the amount of annuity deposit made by him falls short of the annuity deposit required to be made, a sum equal to fifty per cent of the amount by which the amount of the deficiency exceeds the difference between—

- (a) the tax payable by him on his total income, and
- (b) the tax that would have been payable had his total income been reduced by the amount of the deficiency.

Explanation.—(i) In this section, the expression “annuity deposit required to be made shall mean the amount annuity deposit calculated on the adjusted total income of the depositor at the rate or rates specified in the Finance Act of the relevant year, but where the amount so calculated exceeds the amount computed in the manner specified in clause (ii) of this Explanation (the amount so computed being hereinafter referred to as the specified amount), then, the annuity deposit required to be made shall mean the specified amount.

(ii) The specified amount referred to in clause (i) of this Explanation shall be—

- (a) in a case where the total income (as computed without making any allowance under Section 280-0) exceeds fifteen thousand rupees but does not exceed twenty thousand rupees, an amount equal to one per cent of the adjusted total income of the depositor ;
- (b) in a case where the total income (computed in the manner aforesaid) exceeds twenty thousand rupees but does not exceed twenty-five thousand rupees as amount equal to—

(1) the aggregate of the sum calculated at one per cent, on so much of the adjusted total income as does not exceeds twenty thousand rupees and the sum by which the total income (computed in the manner aforesaid) exceeds twenty thousand rupees, or

(2) one and a half per cent of the adjusted total income of the depositor, whichever is less ;

(c) in a case where the total income (computed in the manner aforesaid) exceeds twenty-five thousand rupees, an amount equal to the aggregate of the sum calculated at one and a half per cent on so much of the adjusted total income as does not exceed twenty-five thousand rupees and the sum by which the total income (computed in the manner aforesaid) exceeds twenty-five thousand rupees.

CHAPTER XXIIB

TAX CREDIT CERTIFICATES

280Y. Definitions.—In this Chapter,—

- (a) “eligible issue of capital” means an issue of ordinary shares specified as such in the scheme ;
- (b) “public company” means a public company as defined in Section 3 of the Companies Act, 1956 (1 of 1956) ;
- (c) “scheme” means a scheme made under this Chapter ;
- (d) “urban area” means any area which the Central Government may, having regard to the population, concentration of industries, need for proper planning of the area and other relevant factors by general or special order, declare to be an urban area for the purposes of this Chapter.

280Z. Tax Credit Certificates to certain equity shareholders.—(1) An individual shall be granted a tax credit certificate if he by himself or some other person on his behalf has subscribed to, and made payments in respect of, any eligible issue of capital.

(2) A Hindu undivided family shall also be granted a tax credit certificate if any person subscribed to, and made payments in respect of, any eligible issue of capital on behalf of that Hindu undivided family.

(3) A tax credit certificate granted under the provisions of this section shall be for the amount or the aggregate of the amounts computed as hereunder with reference to the capital so subscribed and paid :

- | | |
|---|-----------------------------|
| (i) On the first Rs. 15,000 of the amount paid in the financial year | at the rate of 5 per cent ; |
| (ii) On the next Rs. 10,000 of the amount paid in the financial year | at the rate of 3 per cent ; |
| (iii) On the next Rs. 10,000 of the amount paid in the financial year | at the rate of 2 per cent ; |
| (iv) On the balance of the amount paid in the financial year | NIL |

Explanation.—For the purposes of this section—

(i) “Subscribed” includes acquisition of the shares forming part of an eligible issue of capital from a person who is specified as an underwriter in pursuance of clause 11 of Part I of Schedule II to the Companies Act, 1956 (1 of 1956) (hereinafter in this section referred to as the underwriter).

(ii) a payment shall be treated as having been made to the extent to which and on the date on which the amount of the said payment has been credited to the share capital account of the company.

(4) A tax credit certificate for the amount specified in sub-section (3) shall be granted to an individual or a Hindu undivided family—

- (a) where payment by way of subscription has been made to the company, in respect of the financial year in which payment has been made and each of the three financial years following that year ;

and

- (b) where the acquisition has been made from the underwriter, in respect of the financial year in which the capital was so acquired and each one, if any, of the following financial years not falling beyond the third financial year from the end of the financial year in which the payment by way of subscription has been made to the company by the underwriter :

Provided that, in either case, the capital is held by or on behalf of the individual or on behalf of the Hindu undivided family, as the case may be, at the end of the relevant financial year :

Provided further that where any part of the capital in respect of which a tax credit certificate had been granted in a financial year (hereinafter referred to as the earlier financial year) is sold, transferred or otherwise disposed of in a subsequent financial year, the tax credit certificate to be granted with reference to the remaining capital in respect of the said subsequent financial year or any financial year following that year shall be for such amount as bears to the amount for which the tax credit certificate was granted in the earlier financial year the same proportion as the amount of the remaining capital as on the 31st day of March of the subsequent financial year bears to the total amount of the capital with reference to which the tax credit certificate was granted in the earlier financial year.

(5) If any individual by himself or on behalf of any other individual or on behalf of any Hindu undivided family has acquired any shares forming part of an eligible issue of capital from the underwriter, he shall not be entitled to a tax credit certificate under this section, unless his name is entered as a shareholder in respect of such shares in the register of shareholders of the company.

(6) The amount shown on a tax credit certificate granted to an individual or Hindu undivided family shall, on the certificate being produced before the Income-tax Officer, be adjusted against the liability of such individual or Hindu undivided family under the Indian Income-tax Act, 1922 (11 of 1922), or this Act, existing on the date on which the certificate was produced before the Income-tax Officer and where the amount of such certificate exceeds such liability, or where there is no such liability, the excess or the whole of such amount, as the case may be, notwithstanding anything contained in Chapter XIX, be deemed on the said date, to be refund due to such individual or Hindu undivided family as the case may be, under that Chapter and the provisions of this Act shall apply accordingly.

(7) The Central Government may specify in a scheme any issue of ordinary shares by a public company as eligible issue of capital.

(8) In specifying any issue of ordinary shares as eligible issue of capital, the Central Government shall have regard to the following factors, namely—

- (a) the total of the capital issued ;
- (b) the terms and conditions subject to which the capital is issued ;
- (c) the trade or business in which the company concerned is engaged ;
- (d) the purposes for which the issue is being made ;
- (e) any other relevant factor.

280ZA. Tax credit certificates for shifting of industrial undertaking from urban area. -(1) If any public company owing an industrial undertaking situate in an urban area shifts, with the prior approval of the Board, such undertaking to any area (not being the area in which such undertaking is situate), it shall be granted a tax credit certificate.

(2) The tax credit certificate to be granted under sub-section (1) shall be for an amount computed in the following manner with reference to the head "capital gains" arising from the transfer of capital assets being buildings or lands or any rights in buildings or lands used for the purposes of the business of the said undertaking in the urban area, effected in the course of or in consequence of the shifting of such industrial undertaking, namely—

(a) the amount of expenditure incurred by the company in—

(i) acquiring lands or constructing buildings for the purposes of the business of the company in the area to which the undertaking is shifted, and

(ii) shifting its machinery or plant and other effects and transferring its establishment to such area,

within a period of three years, from the date of the approval referred to in sub-section (1), or such further period as the Board may allow, shall first be ascertained ;

(b) the amount of the tax credit certificate shall bear to the amount of tax payable by the company on its income chargeable under the head "Capital gains" as aforesaid, the same proportion as the amount of expenditure ascertained under clause (a) bears to the amount of the said income :

Provided that the amount of the tax credit certificate shall in no case exceed the amount of the tax aforesaid.

(3) The amount shown on a tax credit certificate granted to a public company under this section shall, on the certificate being produced before the Income-tax Officer, be adjusted against any liability of the company under the Indian Income-tax Act, 1922 (11 of 1922) or this Act, existing on the date on which the certificate was produced before the Income-tax Officer and where the amount of such Certificate exceeds such liability, or where there is no such liability, the excess or the whole of such amount, as the case may be, shall notwithstanding anything contained in Chapter XIX, be deemed, on the said date, to be refund due to such company under that Chapter and the provisions of this Act shall apply accordingly.

(4) Where a capital asset, being building or land, or any right in building or land, acquired or, as the case may be, constructed in the area to which the undertaking of the company is shifted, is transferred by the company within a period of five years from the date of acquisition or, as the case may be, the date of completion of construction to any person other than the Government, a local authority, a corporation established by a Central, State or Provincial Act or a Government company as defined in Section 617 of the Companies Act, 1956, an amount equal to one-half of the amount for which a tax credit certificate has been granted to the company under sub-section (1) shall be deemed to be tax due from the company on the thirtieth day following the date of transfer under a notice of demand issued under Section 156, and all the provisions of this Act shall apply accordingly.

Explanation.—Any land or building used for the residence of persons employed in the business of the company or for the use of such persons as a hospital, creche, school, canteen, library, recreational centre, shelter, rest-room or lunch-room shall, for the purposes of this section, be deemed to be land or building used for the purposes of the company.

280ZB. Tax credit certificate to certain manufacturing companies in certain cases.—(1) Where any company engaged in the manufacture or production of any of the articles mentioned in the First Schedule to the Industries (Development and Regulation) Act, 1951 is, in respect of its profits and gains attributable to such manufacture or production,—

(i) liable to pay any tax for the assessment year commencing on the 1st day of April, 1965 (hereinafter referred to as the base year) and for any one or more of the five assessment years next following that year ; or

(ii) not liable to pay any tax for the base year but becomes so liable for any succeeding year (hereinafter referred to as the succeeding base year) and also for any one or more of the assessment years following that year, not being an assessment year commencing on the 1st day of April, 1971, or any subsequent assessment year,

and the tax for any such succeeding year exceeds—

- (a) in the case referred to in clause (i), the tax payable for the base year;
- (b) in the case referred to in clause (ii), the tax payable for the succeeding base year,

then the company shall be granted tax credit certificate for an amount equal to twenty per cent of such excess :

Provided that the amount of the tax credit certificate shall not for any assessment year exceed ten per cent of such tax payable by the company for that year.

The amount shown on a tax credit certificate granted to any company under this section, shall, on the certificate being produced before the Income-tax Officer, be adjusted against any liability of the company under the Indian Income-tax Act, 1922 (11 of 1922) or this Act, existing on the date on which the certificate was produced before the Income-tax Officer and where the amount of such certificate exceeds such liability or where there is no such liability, the excess or the whole of such amount, as the case may be, shall notwithstanding anything contained in Chapter XIX, be deemed, on the said date, to be refund due to such company under that Chapter and the provisions of this Act shall apply accordingly

Provided that the adjustment or refund, as the case may be, under this sub-section shall be only such amount, not exceeding the amount of the certificate, as is used within such period as may be specified in the scheme—

- (i) for repayment of loans taken by the company from any of the financial institutions notified in this behalf by the Central Government, or
- (ii) for redemption of its debentures, or
- (iii) for the acquisition of any capital asset in India, including the construction of any building for the purpose of the business of the company.

Explanation 1.— In this section, “tax” means income-tax payable under this Act and surtax, if any, payable under the Companies (Profits) Surtax Act, 1964.

Explanation 2.—The amount of income-tax in respect of the profits or gains attributable to the manufacture or production of the articles referred to in sub-section (1) shall be an amount bearing to the total amount of income-tax payable on the total income (such income-tax being computed in the manner specified hereunder) the same proportion as the amount of such profits or gains bears to the total income.

The amount of income-tax payable by the company for any assessment year shall be computed after making allowance for any relief, rebate or deduction in respect of income-tax to which the company is entitled under the provisions of this Act or the annual Finance Act after deducting from the such amount of income-tax—

(a) the amount of additional income-tax, if any, payable by the company under the provisions of Section 104; and

(b) (i) in respect of the assessment year commencing on the 1st day of April, 1965, the amount, if any, by which the rebate of income-tax admissible to the company under the provisions of the Finance Act, 1965 is, under the provisions of the said Act, reduced with reference to the face value of any bonus share or the amount of any bonus issued by the company to its shareholders during the previous year or any previous year prior to that year or with reference to any amount of dividends declared or distributed by it during the previous year or any previous year prior to that year; or

(ii) in respect of the assessment year commencing on the 1st day of April, 1966, or any subsequent assessment year, the amount of income-tax if any, payable by the company under the provisions of the annual Finance Act with reference to the relevant amount of distributions of dividends by it.

Explanation 3.—The amount of surtax in respect of the chargeable profits attributable to the manufacture or production of the articles referred to in sub-section (1) shall be an amount bearing to the total amount of surtax payable under the Companies (Profits) Surtax Act, 1964 the same proportion as the amount of such chargeable profits bears to the whole of the chargeable profits.

280ZC. Tax credit certificate in relation to exports.—(1) Subject to the provisions of this section, a person who exports any goods or merchandise out of India after the 28th day of February, 1965 and receive the sale proceeds thereof in India in accordance with the Foreign Exchange Regulation Act, 1947 and the rules made thereunder, shall be granted a tax credit certificate for an amount calculated at a rate not exceeding fifteen per cent on the amount of such sale proceeds.

Explanation 1.—For the removal of doubts it is hereby declared that the expression "sale proceeds" in this sub-section does not include freight or insurance attributable to the transport of the goods or merchandise beyond the customs station as defined in the Customs Act, 1962 (52 of 1962).

Explanation 2.—For the purposes of this sub-section, a person who exports any goods or merchandise in respect of which the declaration in pursuance of rule 3 of the Foreign Exchange Regulation Rules, 1952, is required to be in Form E. P. or Form E. P. I. in the First schedule to the said rules, shall not in respect of such goods or merchandise to be deemed to have received the sale proceeds in India in accordance with the Foreign Exchange Regulation Act, 1947, (7 of 1947), and the rules made thereunder unless he receives the same in India through an authorised dealer as defined in the said Act.

(2) The goods or merchandise in respect of which a tax credit certificate shall be granted under sub-section (1) (including the destination of their export) and the rate at which the amount of such certificate shall be calculated shall be such as may be specified in the scheme;

Provided that different rates may be specified in respect of different goods or merchandise.

(3) In specifying the goods or merchandise (including the destination of their export) and the rates, the Central Government shall have regard to the following factors, namely—

- (a) the cost of manufacture or production of such goods or merchandise and prices of similar goods in the foreign markets;
- (b) the need to develop foreign markets for such goods or merchandise;
- (c) the need to earn foreign exchange;
- (d) any other relevant factor.

(4) The amount shown on a tax credit certificate granted to any person under this section shall on the certificate being produced before the Income-tax Officer, be adjusted against any liability of that person under the Indian Income-tax Act, 1922 (11 of 1922), or this Act, existing on the date on which the certificate was produced before the Income-tax Officer and where the amount of such certificate exceeds such liability, or where there is no such liability, the excess or the whole of such amount, as the case may be, shall, notwithstanding anything contained in Chapter XIX, be deemed, on the said date, to be refund due to such person under that Chapter and the provisions of this Act shall apply accordingly.

280ZD. Tax credit certificates in relation to increased production of certain goods—(1) Subject to the provisions of this section, a person, who during any financial year commencing on the 1st day of April, 1965 or any subsequent financial year (not being a year commencing on the 1st day of April, 1970 or any financial year thereafter) manufactures or produces any goods, shall be granted a tax credit certificate for an amount calculated at a rate not exceeding twenty-five per cent of the amount of the duty of excise payable by him on that quantum of the goods cleared by him during the base year, whether the clearance in either case is for home consumption or export.

(2) The goods in respect of which a tax credit certificate shall be granted under sub-section (1) and the rate at which the amount of such certificate shall be calculated shall be such as may be specified in the scheme:

Provided that different rates may be specified in respect of different goods.

(3) In specifying the goods and the rates under sub-section (1) the Central Government shall have regard to the following factors, namely—

- (a) the need for stimulating industrial output;
- (b) the need for financial assistance to industrial undertakings engaged in the manufacture or production of such goods;
- (c) any other relevant factor.

(4) Where any undertaking begins, after the 1st day of April in the base year, to manufacture or produce any goods in respect of which a tax credit certificate may be granted under sub-section (1), the quantum of goods cleared in that year shall, for the purposes of that sub-section, be determined in such manner as may be provided in the scheme.

(5) The amount shown on a tax credit certificate granted to any person under this section shall, on the certificate being produced before the Income-tax

Officer, be adjusted against any liability of that person under the Indian Income-tax Act, 1922 (11 of 1922) or this Act, existing on the date on which the certificate was produced before the Income-tax Officer and where the amount of such certificate exceeds such liability, or where there is no such liability, the excess or the whole of such amount, as the case may be, shall notwithstanding anything contained in Chapter XIX, be deemed, on the said date, to be refund due to such person under that Chapter and the provisions of this Act shall apply accordingly :

Provided that the adjustment or refund, as the case may be, under this sub-section shall be only for such amount, not exceeding the amount of the certificate, as is used within such period as may be specified in the scheme—

- (i) for repayment of loans taken by the person from any of the financial institutions notified in this behalf by the Central Government, or
- (ii) for the acquisition of any capital asset in India, including the construction of any building, for the purposes of his business, or
- (iii) where the person is a company, also for redemption of its debentures.

(6) In this section—

(a) “base year” in relation to an existing undertaking which manufactures or produces the goods referred to in sub-section (1), means the financial year commencing on the 1st day of April, 1964, and in relation to any other undertaking, the financial year in which such undertaking begins to manufacture or produce such goods ;

(b) “duty of excise” means the duty of excise leviable under the Central Excises and Salt Act, 1944 (1 of 1944).

280ZE. Tax credit certificate scheme.—The Central Government shall, by notification in the Official Gazette, frame one or more schemes to be called tax credit certificate scheme or schemes in relation to tax credit certificates to be granted under this Chapter.

(2) A scheme framed under sub-section (1) may provide for—

- (a) the form and manner in which, and the authority to which, applications for the grant of the tax credit certificates shall be made ;
- (b) the form in which, and the intervals at which, and the authority by which, such certificates shall be issued ;
- (c) the verification of any information or particulars furnished or contained in any application made by or on behalf of any person entitled to tax credit certificates ;
- (d) the determination of the rights and obligations of a person to whom such certificate has been granted and the circumstances in which any right in or title to the said certificate may be transferred to or devolve on any other person by succession or otherwise ;
- (e) the determination of the rights and obligations of persons who jointly subscribe to an eligible issue of capital ;

- (f) the determination of the rights and obligations of persons who subscribe to an eligible issue of capital, on behalf, or for the benefit, of any other person;
 - (g) the appointment of any officer of Government or of the Reserve Bank of India to exercise any rights or perform any duties in connection with the grant of the said certificates;
 - (h) the goods or merchandise and the rates for the purposes of Section 280ZC and Section 280ZD and the destination of the export of such goods or merchandise for the purposes of Section 280ZC;
 - (i) any other matter which may be necessary or proper for the effective implementation of the provisions of this Chapter or the scheme.
- (3) The Central Government may, by notification in the Official Gazette, add to, amend, vary or rescind any scheme made under this section.
- (4) Any scheme under this section shall be laid, as soon as may be, after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in any provision of the scheme or both Houses agree that any provision in the scheme should not be made, that provision of the scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that provision.

CHAPTER XXIII

MISCELLANEOUS

281. Transfers to defraud revenue void.—Where, during the pendency of any proceeding under this Act, any assessee creates a charge on or parts with the possession by way of sale, mortgage, exchange or any other mode of transfer whatsoever, of any of his assets in favour of any other person with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding :

Provided that such charge or transfer shall not be void if made for valuable consideration and without notice of the pendency of the proceeding under this Act.

282. Service of notice generally.—A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908 (5 of 1908).

(2) Any such notice or requisition may be addressed—

- (a) in the case of a firm or a Hindu undivided family, to any member of the firm or to the manager or any adult member of the family ;
- (b) in the case of local authority or a company, to the principal officer thereof ;
- (c) in the case of any other association or body of individuals, to the principal officer or any member thereof ;
- (d) in the case of any other person (not being an individual) to the person who manages or controls his affairs.

283. Service of notice when family is disrupted or firm, etc., is dissolved.

—(1) After a finding of total partition has been recorded by the Income-tax Officer under Section 171 in respect of any Hindu family, notices under this Act in respect of the income of the Hindu family shall be served on the person who was the manager of the Hindu family or, if such person is dead, then all adults who were members of the Hindu family immediately before the partition.

(2) Where a firm or other association of persons is dissolved, notices under this Act in respect of the income of the firm or association may be served on any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before its dissolution.

284. Service of notice in the case of discontinued business.—Where an assessment is to be made under Section 176, the Income-tax Officer may serve on the person whose income is to be assessed, or, in the case of a firm or an association of persons, on any person who was a member of such firm or association at the time of its discontinuance or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 139, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that section.

285. Information by person responsible for paying interest.—The person responsible for paying interest, not being “Interest on securities”, shall, on or before the fifteenth day of June in each year, furnish to the Income-tax Officer having jurisdiction to assess him, a return in the prescribed form and verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount, not being less than four hundred rupees, as may be prescribed in this behalf, together with the amount paid to each such person.

285A. Information by contractors in certain cases.—(1) Where any person (hereinafter referred to as the contractor) enters into a contract for the construction of a building for, or the supply of goods or services in connection therewith, to any other person, the value of which exceeds fifty thousand rupees, he shall within one month of the making of the contract, furnish to the Income-tax Officer having jurisdiction to assess the contract or such particulars relating to the contract and in such form as may be prescribed.

(2) Without prejudice to the provisions of any other law for the time being in force, where any contractor contravenes the provisions of sub-section (1) the Commissioner may impose upon him such fine not exceeding fifty rupees as he thinks fit for every day during which the contravention continues, so however, that the amount of fine so imposed shall not, in the aggregate, exceed twenty-five per cent of the value of the contract.

(3) The Commissioner shall, on making an order under this section imposing a fine, forthwith send a copy of the same to the Income-tax Officer.

286. Information by companies respecting shareholders to whom dividends have been paid.—The principal officer of every company which is an Indian company or a company which has made such arrangements as may be prescribed for the declaration and payment of dividends in India shall, on or before the fifteenth day of June in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses, as entered in the register of shareholders maintained by the company, of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceeding year and of the amount so distributed to each shareholder.

287. Publication of information respecting assessee.—(1) If the Central Government is of opinion that it is necessary or expedient in the public interest to publish the names of any assessee and any other particulars relating to any proceeding under this Act in respect of such assessee, it may cause to be published such names and particulars in such manner as it thinks fit.

(3) No publication under this section shall be made in relation to any penalty imposed, or any conviction for any offence connected with any proceedings, under this Act until the time for presenting an appeal to the Appellate Assistant Commissioner or to the first Appellate Court, as the case may be, has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation.—In the case of the firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers, or managers of the company, or the members of the association, as the case be, may also be published if, in the opinion of the Central Government, the circumstances of the case justify it.

288. Appearance by authorised representative.—(1) Any assessee who is entitled or required to attend before any Income-tax authority or the Appellate Tribunal in connection with any proceeding under this Act otherwise than when required under Section 131 to attend personally for examination on oath or affirmation, may, subject to the other provisions of this section, attend by an authorised representative.

(2) For the purposes of this section, "authorised representative" means a person authorised by the assessee in writing to appear on his behalf, being—

- (i) a person related to the assessee in any manner, or a person regularly employed by the assessee; or
- (ii) any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings; or

- (iii) any legal practitioner who is entitled to practice in any civil court in India ; or
- (iv) an accountant ; or
- (v) any person who has passed any accountancy examination recognised in this behalf by the Board ; or
- (vi) any person who has acquired such educational qualification as the Board may prescribe for this purpose ; or

(via) any person who, before the coming into force of this Act in the Union territory of Dadra and Nagar Haveli, Goa, Daman and Diu, or Pondicherry, attended before an Income-tax authority in the said territory on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee ; or

(vii) any other person who, immediately before the commencement of this Act, was an Income-tax practitioner within the meaning of clause (iv) of sub-section (2) of Section 61 of the Indian Income-tax Act, 1922 (11 of 1922), and was actually practising as such.

Explanation.—In this section, “accountant” means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), and includes in relation to any State, any person who by virtue of the provisions of sub-section (2) of Section 226 of the Companies Act, 1956 (1 of 1956), is entitled to be appointed to act as an auditor of companies registered in that State.

(3) Notwithstanding anything contained in this section, if the authorised representative is a person formerly employed as an income-tax authority, not below the rank of Income-tax Officer, and has retired or resigned from such employment after having served for not less than three years in any capacity under this Act or under the Indian Income-tax Act, 1922 (11 of 1922), from the date of his first employment as such, he shall not be entitled to represent any assessee for a period of two years from the date of his retirement or resignation, as the case may be.

(4) No person—

- (a) who has been dismissed or removed from Government service after the 1st day of April, 1938 ; or
- (b) who has been convicted of an offence connected with any income-tax proceeding or on whom a penalty has been imposed under this Act other than a penalty imposed on him under clauses (i) and (ii) of sub-section (1) of Section 271 ; or
- (c) who has become an insolvent,

shall be qualified to represent an assessee under sub-section (1), for all times in case of a person referred to in sub-clause (a), for such time as the Commissioner may by order determine in the case of a person referred to in sub-clause (b), and for the period during which the insolvency continues in the case of a person referred to in sub-clause (c).

(5) If any person—

- (a) who is a legal practitioner or an accountant is found guilty of misconduct in his professional capacity by an authority entitled to

institute disciplinary proceedings against him, an order passed by that authority shall have effect in relation to his right to attend before an income-tax authority as it has in relation to his right to practise as a legal practitioner or accountant, as the case may be ;

- (b) who is not a legal practitioner or an accountant, is found guilty of misconduct in connection with any income-tax proceedings by the prescribed authority, the prescribed authority may direct that he shall thenceforth be disqualified to represent an assessee under sub-section (1).

(6) Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely—

- (a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard ;
- (b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the Board to have the order or direction cancelled ; and
- (c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

(7) A person disqualified to represent an assessee by virtue of the provisions of sub-section (2) of Section 61 of the Indian Income-tax Act, 1922 (11 of 1922), shall be disqualified to represent an assessee under sub-section (1).

288A. Rounding off of income.—The amount of total income computed in accordance with the foregoing provisions of this Act shall be rounded off to the nearest multiple of ten rupees and for this purpose any part of a rupee consisting of paise shall be ignored and thereafter if such amount is not a multiple of ten, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is a multiple of ten and if the last figure is less than five, the amount shall be reduced to the next lower amount which is a multiple of ten ; and the amount so rounded off shall be deemed to be the total income of the assessee for the purposes of this Act.

288B. Rounding off of tax etc.—The amount of tax (including tax deductible at source or payable in advance), interest, penalty, fine or any other sum payable, and the amount of refund due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of rupee consisting of paise, then if such part is fifty paise or more it shall be increased to one rupee and if such part is less than fifty paise, it shall be ignored.

289. Receipt to be given.—A receipt shall be given for any money paid or recovered under this Act.

290. Indemnity.—Every person deducting, retaining or paying tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for deduction, retention, or payment thereof.

291. Power to tender immunity from prosecution.—(1) The Central Government may, if it is of opinion (the reasons of such opinion being recorded

in writing) that with a view to obtaining the evidence or any person appearing to have been directly or indirectly concerned in or privy to the concealment of income or to the evasion of payment of tax on income, tender to such person immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860), or under any other Central Act for the time being in force and also from the imposition of any penalty under this Act on condition of his making a full and true disclosure of the whole circumstances relating to the concealment of income or evasion of payment of tax on income, if it is necessary or expedient so to do.

(2) A tender of immunity made to, and accepted by, the person concerned shall, to the extent to which the immunity extends, render him immune from prosecution for any offence in respect of which the tender was made or from the imposition of any penalty under this Act.

(3) If it appears to the Central Government that any person to whom immunity has been tendered under this section has not complied with the condition on which the tender was made or is wilfully concealing anything or is giving false evidence, the Central Government may record a finding to that effect, and thereupon the immunity shall be deemed to have been withdrawn, and any such person may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same matter and shall also become liable to the imposition of any penalty under this Act to which he would otherwise have been liable.

292. Cognisance of offences.—No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence under this Act.

293. Bar of suits in civil courts.—No suit shall be brought in any civil court to set aside or modify any assessment order made under this Act, and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act.

294. Act to have effect pending legislative provision for charge of tax.—If on the 1st day of April in any assessment year provision has not yet been made by a Central Act for the charging of Income-tax for that assessment year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding assessment year or the provision proposed in the Bill then before Parliament, whichever is more favourable to the assessee, were actually in force.

294A. Power to make exemption etc., in relation to certain Union territories.—If the Central Government considers it necessary or expedient so to do for avoiding any hardship or anomaly or removing any difficulty that may arise as a result of the application of this Act to the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu, and Pondicherry or in the case of the Union territory of Pondicherry, for implementing any provision of the Treaty of Cession concluded between France and India on the 28th day of May, 1956, that Government may, by general or special order, make an exemption, reduction in rate or other modification in respect of Income-tax in favour of any assessee or class of assessee or in regard to the whole or any part of the income of any assessee or class of assessee:

Provided that the power conferred by this section shall not be exercisable after the 31st day of March, 1967 except for the purpose of rescinding an exemption, reduction or modification already made.

295. Power to make rules.—(1) The Board may, subject to the control of the Central Government by notification in the Gazette of India, make rules for the whole or any part of India for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters—

(a) the ascertainment and determination of any class of income ;

(b) the manner in which and the procedure by which the income shall be arrived at in the case of—

(i) income derived in part from agriculture and in part from business ;

(ii) persons residing outside India ;

(c) the determination of the value of any perquisite chargeable to tax under this Act in such manner and on such basis as appears to the Board to be proper and reasonable ;

(d) the percentage on the written down value which may be allowed as depreciation in respect of buildings, machinery, plant or furniture ;

(dd) the extent to which, and the conditions subject to which, any expenditure referred to in sub-section (3) of Section 37 may be allowed ;

(e) the percentage of the amount to be prescribed under clause (i) of sub-section (4) of Section 80C ;

(f) the manner in which and the period to which any such income as is referred to in Section 180 may be allocated ;

(g) the authority to be prescribed for any of the purposes of this Act ;

(h) the procedure for giving effect to the terms of any agreement for the granting of relief in respect of double taxation or for the avoidance of double taxation which may be entered into by the Central Government under this Act ;

(i) the form and manner in which any application, claim, return or information may be made or furnished and the fees that may be levied in respect of any application or claim ;

(j) the manner in which any document required to be filed under this Act may be verified ;

(k) the procedure to be allowed on applications for refunds ;

(l) the regulation of any matter for which provision is made in Section 230 ;

(m) the form and manner in which any appeal or cross-objection may be filed under this Act, the fee payable in respect thereof and the manner in which intimation of any such order as is referred to in clause (c) of sub-section (2) of Section 249 may be served ;

(n) the maintenance of a register of persons other than legal practitioners or accountants as defined in sub-section (2) of Section 289 practising

before income-tax authorities and for constitution of and the procedure to be followed by the authority referred to in sub-section (5) of that section ;

(o) the issue of certificate verifying the payment of tax by assessee ;

(p) any other matter which by this Act is to be, or may be prescribed.

(3) In cases coming under clause (b) of sub-section (2), where the income liable to tax cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which in the opinion of the Board is unreasonable, the rules made under this section may—

(a) prescribe methods by which an estimate of such income may be made ;

(b) in cases coming under sub-clause (i) of clause (b) of sub-section (2) specify the proportion of the income which shall be deemed to be duly made in accordance with the provisions of this Act.

296. Rules to be placed before Parliament.—The Central Government shall cause every rule made under this Act to be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and, if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree that the rule should not be made, that rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

297. Repeals and savings.—(1) The Indian Income-tax Act, 1922 (11 of 1922) is hereby repealed.

(2) Notwithstanding the repeal of the Indian Income-tax Act, 1922 (11 of 1922) (hereinafter referred to as the repealed Act),—

(a) where a return of income has been filed before commencement of this Act by any person for any assessment year, proceedings for the assessment of that person for that year may be taken and continued as if this Act had not been passed ;

(b) where a return of income is filed after the commencement of this Act otherwise than in pursuance of a notice under Section 34 of the repealed Act by any person for the assessment year ending on the 31st day of March 1962, or any earlier year, the assessment of the person for that year shall be made in accordance with the procedure specified in this Act ;

(c) any proceeding pending on the commencement of this Act before any income-tax authority, the appellate tribunal or any court, by way of appeal, reference or revision shall be continued and disposed of as if this Act had not been passed ;

(d) where in respect of any assessment year after the year ending on the 31st day of March, 1940,—

(i) a notice under Section 34 of the repealed Act had been issued before the commencement of this Act, the proceedings in pursuance of such notice may be continued and disposed of as if this Act had not been passed ;

(ii) any income chargeable to tax had escaped assessment within the meaning of that expression in Section 147 and no proceedings under Section 34 of the repealed Act in respect of any such income are pending at the commencement of this Act, a notice under Section 148 may, subject to the provisions contained in Section 149 or Section 150, be issued with respect to that assessment year and all the provisions of this Act shall apply accordingly ;

(e) subject to the provisions of clause (g) and clause (j) of this sub-section, Section 23A of the repealed Act shall continue to have effect in relation to the assessment of any company or its shareholders for the assessment year ending on the 31st day of March, 1962, or any earlier year, and the provisions of the repealed Act shall apply to all matters arising out of such assessment as fully and effectually as if this Act had not been passed ;

(f) any proceeding for the imposition of a penalty in respect of any assessment completed before the 1st day of April, 1962 may be initiated and any such penalty may be imposed as if this Act had not been passed ;

(g) any proceeding for the imposition of penalty in respect of any assessment for the year ending on the 31st day of March, 1962, or any earlier year, which is completed on or after 1st day of April, 1962, may be initiated and any such penalty may be imposed under this Act ;

(h) any election or declaration made or option exercised by an assessee under any provision of the repealed Act in force immediately before the commencement of this Act shall be deemed to have been an election or declaration made or option exercised under the corresponding provisions of this Act ;

(i) where, in respect of any assessment completed before the commencement of this Act, a refund falls due after such commencement or default is made after such commencement in the payment of any sum due under such completed assessment, the provisions of this Act relating to interest payable by the Central Government on refunds and interest payable by the assessee for default shall apply ;

(j) any sum payable by way of income-tax, super-tax, interest, penalty or otherwise under the repealed Act may be recovered under this Act, but without prejudice to any action already taken for the recovery of such sum under the repealed Act ;

(k) any agreement entered into, appointment made, approval given, recognition granted, direction, instruction, notification, order or rule issued under any provision of the repealed Act shall, so far as it is not inconsistent with the corresponding provision of this Act, be deemed to have been entered into, made, granted, given or issued under the corresponding provision aforesaid and shall continue in force accordingly ;

(l) any notification issued under sub-section (1) of Section 60 or Section 60A of the repealed Act and in force immediately before the commencement of this Act shall, to the extent to which provision has not been made under this Act, continue in force until rescinded by the Central Government ;

(m) where the period prescribed for any application, appeal, reference or revision under the repealed Act, had expired on or before commencement of this Act, nothing in this Act shall be construed as enabling any such application, appeal, reference or revision to be made under this Act by reason only of

the fact that a longer period thereof is prescribed or provision is made for extension of time in suitable cases by the appropriate authority.

298. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act the Central Government may, by general or special order, do anything not inconsistent with such provisions which appears to it to be necessary or expedient for the purpose of removing the difficulty.

(2) In particular, and without prejudice to the generality of the foregoing power, any such order may provide for the adaptations or modifications subject to which the repealed Act shall apply in relating to the assessments for the assessment year ending on the 31st day of March, 1962, or any earlier year.

THE FIRST SCHEDULE

INSURANCE BUSINESS

(See Section 44)

A.—Life Insurance business

1. Profits of Life Insurance business to be computed separately.—In the case of person who carries on or at any time in the previous year carried on life insurance business, the profits and gains of such person from that business shall be computed separately from his profits and gains from any other business.

2. Computation of profits of Life Insurance business.—(1) The profits and gains of life insurance business shall be taken to be the greater of the following—

(a) the gross external incomings of the previous year from that business less the management expenses of that year ;

(b) the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in accordance with the Insurance Act, 1938 (4 of 1938), in respect of the last inter-valuation period ending before the commencement of the assessment year, so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period and any expenditure, or allowance which is not deductible under the provisions of Sections 30 to 43A in computing income chargeable under the head "Profits and gains of business or profession".

(2) The amount to be allowed as management expenses under sub-rule (1) shall not exceed the aggregate of the following—

(a) $7\frac{1}{2}$ per cent of the premium received during the previous year in respect of single premium life insurance policies ;

(b) in respect of the first year's premiums received in respect of other life insurance policies for which the number of annual premiums payable is less than twelve, or for which the number of years during which premiums are payable is less than twelve, for each such premium or each such year $7\frac{1}{2}$ per cent of such first year's premiums received during the previous year.

(c) 90 per cent of the first year's premium received during the previous year in respect of all other life insurance policies;

(d) in respect of all renewal premiums received during the previous year, an amount calculated at such percentage thereof as is permissible under sub-section (2) of Section 40B of the Insurance Act 1958, as reduced by any expenditure or allowance which is not deductible under Sections 30 to 43A in computing income chargeable under the head "Profits and gains of business or profession".

3. Deductions.—In computing the surplus for the purpose of rule 2,—

(a) four-fifths of the amounts paid to or reserved for or expended on behalf of policy-holders shall be allowed as a deduction

Provided that if any amount so reserved or policy holders ceases to be so reserved, and is not paid to or expended on behalf of policy-holders, that proportion of such amount (one half or four-fifths, as the case may be) if it has been previously allowed as a deduction under this Act or under the Indian Income-tax Act, 1922 (11 of 1922), shall be treated as part of the surplus for the period in which the said amount ceased to be so reserved,

(b) any amount either written off or reserved in the accounts or through the actuarial valuation balance sheet to meet depreciation of or loss on the realisation of investments shall be allowed as a deduction, and any sums taken credit for in the accounts of actuarial valuation balance sheet on account of appreciation of or gains on the realisation of investments shall be included in the surplus

Provided that if upon investigation it appears to the Income-tax Officer after consultation with the Controller of Insurance that having due regard to the necessity for making reasonable provision for business or participating policy-holders and for contingencies, the rate of interest or other factor employed in determining the liability in respect of outstanding policies is materially inconsistent with the valuation of investments so as artificially to reduce the surplus, such adjustment shall be made to the allowance for depreciation or to the amount to be included in the surplus in respect of appreciation of such investments as shall increase the surplus for the purposes of these provisions to a figure which is fair and just,

(c) interest received during the inter-valuation period in respect of any securities of the Central Government which have been issued or declared to be income-tax-free, shall not be excluded, but the assessee shall be entitled to a deduction from the amount of income-tax with which he is chargeable on his total income, of an amount calculated at the rate of twenty-seven and a half per cent on the average of the amount of such interest.

4. Adjustment of tax paid by deduction at source.—Where for any year an assessment of the profits of life insurance business is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valua-

tion period exceeding twelve months, then, in computing the income-tax payable for that year, credit shall not be given in accordance with Section 199 for the income-tax paid in the previous year, but credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period.

B.—Other insurance business

5. Computation of profits and gains of other insurance business.—The profits and gains of any business of insurance other than life insurance shall be taken to be balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938 (4 of 1938), to be furnished to the Controller of Insurance, subject to the following adjustments—

(a) subject to the other provisions of this rule, any expenditure or allowance which is not admissible under the provisions of Sections 30 to 43A in computing the profits and gains of a business shall be added back ;

(b) any amount either written off or reserved in the accounts to meet depreciation of or loss on the realisation of investments shall be allowed as a deduction, and any sums taken credit for in the accounts on account of appreciation of or gains on the realisation of investments shall be treated as part of the profits and gains ;

Provided that the Income-tax Officer is satisfied about the reasonableness of the amount written off or reserved in the accounts, as the case may be, to meet depreciation of or loss on the realisation of investments ;

(c) such amount carried over to a reserve for unexpired risks as may be prescribed in this behalf shall be allowed as a deduction.

C.—Other provisions

6. Profits and gains of non-resident person.—(1) The profits and gains of the branches in India of a person not resident in India and carrying on any business of insurance, may, in the absence of more reliable data, be deemed to be that proportion of the world income of such person which corresponds to the proportion which his premium income derived from India bears to his total premium income.

(2) For the purposes of this rule, the world income in relation to life insurance business of a person not resident in India shall be computed in the manner laid down in this Act for the computation of the profits and gains of life insurance business carried on in India.

7. Interpretation.—(1) For the purposes of these rules—

(i) “gross external incoming” means the full amount of incomings from interest, dividends, fines and fees and all other incomings from whatever source derived (except premiums received from policy-holders and interest and dividends on any annuity fund), and includes also profits from reversions and in the sale or the granting of annuities, but excludes profits on the realisation of investments ;

Provided that incomings, including the annual value of the property occupied by the assessee, which but for the provisions of Section 44 would have

been assessable under the head "Income from house property," shall be computed in the manner applicable to income chargeable under that head, and that there shall be allowed from such gross incomes such deductions as are permissible in respect of income chargeable under that head ;

(ii) "investments" includes securities, stocks and shares ;

(iii) "management expenses" means the full amount of expenses (including commissions) incurred exclusively in the management of the business of life insurance, and in the case of a company carrying on other classes of business as well as the business of life insurance, in addition thereto a fair proportion of the expenses incurred in the general management of the whole business. Bonuses or other sums paid to or reserved on behalf of policy-holders, depreciation of, and losses on the realisation of investments, and any expenditure or allowance other than expenditure or allowance which may under the provisions of Sections 30 to 43A be allowed for in computing the profits and gains of a business, are not management expense for the purpose of these rules ;

(iv) "life insurance business" means life insurance business as defined in clause (1) of Section 2 of the Insurance Act, 1938 (4 of 1938) ;

(v) "rule" means a rule contained in this Schedule.

(2) Reference in these rules to the Insurance Act, 1938 (4 of 1938), or any provisions thereof, shall in relation to the Life Insurance Corporation of India, be construed as reference to that Act or provisions as read with Section 43 of the Life Insurance Corporation Act, 1956 (31 of 1956).

THE SECOND SCHEDULE

PROCEDURE FOR RECOVERY OF TAX

PART I

General Provisions

1. Definitions.—In this Schedule, unless the context otherwise requires,—

- (a) "certificate" means a certificate received by the Tax Recovery Officer from the Income-tax Officer for the recovery of arrears under this Schedule ;
- (b) "defaulter" means the assessee mentioned in the certificate ;
- (c) "execution", in relation to certificate, means recovery of arrears in pursuance of the certificate ;
- (d) "movable property" includes growing crops ;
- (e) "officer" means a person authorised to make an attachment or sale under this Schedule ;

- (f) "rule" means a rule contained in this Schedule; and
- (g) "share in a corporation" includes stock, debenture stock, debentures or bonds.

2. Issue of notice.—When a certificate has been received by the Tax Recovery Officer from the Income-tax Officer for the recovery of arrears under this Schedule, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under this Schedule.

3. When certificate may be executed.—No step in execution of a certificate shall be taken until the period of fifteen days has elapsed since the date of the service of the notice required by the preceding rule :

Provided that, if the Tax Recovery Officer is satisfied that the defaulter is likely to conceal, remove or dispose of the whole or any part of such of his movable property as would be liable to attachment in execution of a decree of a civil court and that the realisation of the amount of the certificate would in consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such property :

Provided further that if the defaulter whose property has been attached furnishes security to the satisfaction of the Tax Recovery Officer, such attachment shall be cancelled from the date on which such security is accepted by the Tax Recovery Officer.

4. Mode of recovery.—If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant in his discretion, the Tax Recovery Officer shall proceed to realise the amount by one or more of the following modes—

- (a) by attachment and sale of the defaulter's movable property ;
- (b) by attachment and sale of defaulter's immovable property ;
- (c) by arrest of the defaulter and his detention in prison ;
- (d) by appointing a receiver for the management of the defaulter's movable and immovable properties.

5. Interest, costs and charges recoverable.—There shall be recoverable, in the proceedings in execution of every certificate—

(a) such interest upon the amount of tax or penalty or other sum to which the certificate relates as is payable in accordance with sub-section (2) of Section 220, and

(b) all charges incurred in respect of—

- (i) the service of notice upon the defaulter to pay the arrears, and of warrants and other processes, and
- (ii) all other proceedings taken for realising the arrears.

6. Purchaser's title.—(1) Where property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest

of the defaulter at the time of the sale, even though the property itself be specified.

(2) Where immovable property is sold in execution of a certificate, and such has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

7. Suit against purchaser not maintainable on ground of purchase being made on behalf of plaintiff.—(1) No suit shall be maintained against any person claiming title under a purchase certified by the Tax Recovery Officer in the manner laid down in this Schedule, on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was interested in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against the property though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

8. Disposal of proceeds of execution.—(1) Whenever assets are realised, by the sale or otherwise in execution of a certificate, they shall be disposed of in the following manner—

- (a) there shall first be paid to the Income-tax Officer the costs incurred by him ;
- (b) there shall, in the next place, be paid to the Income-tax Officer the amount due under the certificate in execution of which the assets were realised ;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the Income-tax Officer therefrom any other amount recoverable under the procedure provided by this Act which may be due upon the date upon which the assets were realised ; and
- (d) the balance (if any) remaining after the payment of the amount (if any) referred to in clause (c) shall be paid to the defaulter.

(2) If the defaulter disputes any claim made by the Income-tax Officer to receive any amount referred to in clause (c), the Tax Recovery Officer shall determine the dispute.

9. General bar to jurisdiction of civil courts, save where fraud alleged.—Except as otherwise expressly provided in this Act, every question arising between the Income-tax Officer and the defaulter or their representatives, relating to the execution, discharge or satisfaction, of a certificate duly filed under this Act, or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Tax Recovery Officer before whom such question arises :

Provided that a suit may be brought in a civil court in respect of any such question upon the ground of fraud.

10. Property exempt from attachment.—(1) All such property as is by the Code of Civil Procedure 1908 (5 of 1908), exempted from attachment and sale in execution of a decree of a civil court shall be exempt from attachment and sale under this Schedule.

(2) The Tax Recovery Officer's decision as to what property is so entitled to exemption shall be conclusive.

11. Investigation by Tax Recovery Officer.—(1) Where any claim is preferred to, or any objection is made to the attachment or sale of any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection :

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it pending the investigation of the claim or objection upon such terms as to security or otherwise as the Tax Recovery Officer shall deem fit.

(3) The claimant or objector must adduce evidence to show that

(a) (in the case of immovable property) at the date of the service of the notice issued under this Schedule to pay the arrears, or

(b) (in the case of movable property) at the date of the attachment, he had some interest in, or was possessed of, the property in question.

(4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute ; but, subject to the result of such (if any), the order of the Tax Recovery Officer shall be final.

12. Removal of attachment on satisfaction or cancellation of certificate,
—Where—

(a) the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to hold a sale, and paid to the Tax Recovery Officer, or

(b) the certificate is cancelled,

the attachment shall be deemed to be withdrawn and in the case of immovable property, the withdrawal shall, if the defaulter so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner provided by this Schedule for a proclamation of sale of immovable property.

13. Officer entitled to attach and sell.—The attachment and sale of movable property and the attachment and sale of immovable property may be made by such person as the Tax Recovery Officer may from time to time direct.

14. Defaulting purchaser answerable for loss on resale.—Any deficiency of price which may happen on a resale by reason of the purchaser's default, and all expenses attending such resale, shall be certified to the Tax Recovery Officer by the officer holding the sale, and shall, at the instance of either the income-tax Officer or the defaulter, be recoverable from the defaulting purchaser under the procedure provided by this Schedule :

Provided that no such application shall be entertained unless filed within fifteen days from the date of resale.

15. Adjournment or stoppage of sale.—(1) The Tax Recovery Officer may, in his discretion, adjourn any sale hereunder to a specified day and hour ; and the officer conducting any such sale may, in his discretion, adjourn the sale recording his reason for adjournment :

Provided that, where the sale is made in, or within the precincts of, the office of the Tax Recovery Officer, no such adjournment shall be made without the leave of the Tax Recovery Officer.

(2) Where a sale of immovable property is adjourned under sub-rule (1) for a longer period than one calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the arrears and costs (including the cost of the sale) are tendered to the officer conducting the sale or proo. is given to his satisfaction that the amount of such arrears and costs has been paid to the Tax Recovery Officer who ordered the sale.

16. Private alienation to be void in certain cases.—(1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative-in-interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend of other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

17. Prohibition against bidding or purchase by Officer.—No officer or other person having any duty to perform in connection with sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

18. Prohibition against sale on holidays.—No sale under this Schedule shall take place on a Sunday or other general holiday recognised by the State Government or on any day which has been notified by the State Government to be a local holiday for the area in which the sale is to take place.

19. Assistance by police.—Any officer authorised to attach or sell any property or to arrest the defaulter or charged with any duty to be performed under this Schedule, may apply to the officer-in-charge of the nearest police station for such assistance as may be necessary in the discharge of his duties, and the authority to whom such application is made shall depute a sufficient number of police officers for furnishing such assistance.

19A. Entrustment of certain functions by Collector or Additional Collector.—A Tax Recovery Officer, being a Collector or an Additional Collector, may, subject to the approval of the State Government, entrust any of his functions as Tax Recovery Officer to any other officer lower than him in rank who is empowered to effect recovery of arrears of land revenue or other public demand under any law relating to land revenue or other public demand for the time being in force in the State and such Officer shall, in relation to function so entrusted to him be deemed to be a Tax Recovery Officer.

PART II

ATTACHMENT AND SALE OF MOVABLE PROPERTY

ATTACHMENT

20. Warrant.—Except as otherwise provided in this Schedule, when any movable property is to be attached, the officer shall be furnished by the Tax Recovery Officer (or other officer empowered by him in that behalf) a warrant in writing and signed with his name specifying the name of the defaulter and the amount to be realised.

21. Service of copy of warrant.—The officer shall cause a copy of the warrant to be served on the defaulter.

22. Attachment.—If, after service of the copy of the warrant, the amount is not paid forthwith, the officer shall proceed to attach the movable property of the defaulter.

23. Property in defaulter's possession.—Where the property to be attached is movable property (other than agricultural produce) in the possession of the defaulter, the attachment shall be made by actual seizure, and the officer shall keep the property in his own custody or the custody of one of his subordinates and responsible for due custody thereof :

Provided that when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, the officer may sell it at once.

24. Agricultural produce.—Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment—

- (a) where such produce is growing crop—on the land on which such crop has grown, or
- (b) where such produce has been cut or gathered,—on the threshing floor or place for trading out grain or the like, or fodder-stack, on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the defaulter ordinarily resides, or with the leave of the Tax Recovery Officer, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain. The produce shall, thereupon, be deemed to have passed into the possession of the Tax Recovery Officer.

25. Provisions as to agricultural produce under attachment.—(1) Where agricultural produce is attached, the Tax Recovery Officer shall make such arrangements for the custody, watching, tending, cutting, and gathering thereof as he may deem sufficient; and the Income-tax Officer shall bear such sum as Tax Recovery Officer shall require in order to defray the cost of such arrangements.

(2) Subject to such conditions as may be imposed by the Tax Recovery Officer in this behalf, either in the order of attachment or in any subsequent order, the defaulter may tend, cut, gather and store the produce and to any other act necessary for maturing or preserving it; and, if the defaulter fails to do all or any of such acts, any person appointed by the Tax Recovery Officer in this behalf may, subject to the like conditions, do all or any of such acts, and the costs incurred by such person shall be recoverable from the defaulter as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been served from the soil.

(4) Where an order for the attachment of a growing crop has been made, at a considerable time before the crop is likely to be fit to be cut or gathered, the Tax Recovery Officer may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be cut or gathered.

26. Debts and shares, etc.—(1) In the case of—

- (a) a debt not secured by a negotiable instrument,

- (b) a share in a corporation, or
- (c) other movable property not in the possession of the defaulter except property deposited in, or in the custody of, any court,

the attachment shall be made by a written order prohibiting,—

- (i) in the case of the debt - the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Tax Recovery Officer ;
- (ii) in the case of the share—the person in whose name the share may be standing from transferring the same or receiving any dividend thereon ;
- (iii) in the case of the other movable property (except as aforesaid) - the person in possession of the same from giving it over to the defaulter.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the Tax Recovery Officer, and another copy shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and in the case of the other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt to the Tax Recovery Officer, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

27. Attachment of decree.—(1) The attachment of a decree of a civil court for the payment of money or for sale in enforcement of a mortgage or charge shall be made by the issue to the civil court of a notice requesting the civil court to stay the execution of the decree unless and until—

- (i) the Tax Recovery Officer cancels the notice, or
- (ii) the Income-tax Officer or the defaulter applies to the court receiving such notice to execute the decree.

(2) Where a civil court receives an application under clause (ii) of sub-rule (1), it shall, on the application of the Income-tax Officer or the defaulter and subject to the provisions of the Code of Civil Procedure, 1908 (5 of 1908), proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate.

(3) The Income-tax Officer shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

28. Share in movable property.—Where the property to be attached consists of the share or interest of the defaulter in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the defaulter prohibiting him from transferring the share or interest or charging it in any way. (

29. Salary of Government servants.—Attachment of the salary or allowances of servants of the Government or a local authority may be made in the manner provided by rule 48 Order 21 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), and the provisions of the said rule shall, for the purpose of this rule, apply subject to such modifications as may be necessary.

30. Attachment of negotiable instrument.—Where the property is a negotiable instrument not deposited in a court or in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought before the Tax Recovery Officer, and held subject to his order.

31. Attachment of property in custody of court or public officer.—Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Tax Recovery Officer by whom the notice is issued:

Provided that, where such property is in the custody of a court, any question of title or priority arising between the Income-tax Officer and any other person, not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

32. Attachment of partnership property.—(1) Where the property to be attached consists of an interest of the defaulter being a partner, in the partnership, the Tax Recovery Officer may make an order charging the share of such partner in the partnership property and profits with payments of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries, and make an order for the sale of such interest or such other order as the circumstances of the case may require.

(2) The other person shall be at liberty at any time to redeem the interest charged or, in the case of sale being directed, to purchase the same.

33. Inventory. In the case of attachment of movable property by actual seizure, the officer shall after attachment of the property, prepare an inventory of all the property attached, specifying in it the place where it is lodged or kept and shall forward the same to the Tax Recovery Officer and a copy of the inventory shall be delivered by the Officer to the defaulter.

34. Attachment not to be excessive.—The attachment by seizure shall not be excessive, that is to say, the property attached shall be as nearly as possible proportionate to the amount specified in the warrant.

35. Seizure between sun-rise and sun-set.—Attachment by seizure shall be made after sun-rise and before sun-set and not otherwise.

36. Power to break open doors, etc.—The officer may break open any inner or outer door or window of any building and enter any building in order to seize any movable property if the officer has reasonable grounds to believe that such building contains movable property liable to seizure under the warrant and the officer has notified his authority and intention of breaking open if admission is not given. He shall, however, give all reasonable opportunity to woman to withdraw.

SALE

37. Sale.—The Tax Recovery Officer may direct that any movable property attached under this Schedule or such portion thereof as may seem necessary to satisfy the certificate shall be sold.

38. Issue of proclamation.—When any sale of movable property is ordered by the Tax Recovery Officer, the Tax Recovery Officer shall issue a proclamation in the language of the district, of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.

39. Proclamation how made.—(1) Such proclamation shall be made by beat of drum or other customary mode—

- (a) in the case of property attached by actual seizure—
 - (i) in the village in which the property was seized, or, if the property was seized in a town or city, then in the locality in which it was seized ; and
 - (ii) at such other places as the Tax Recovery Officer may direct,
- (b) in the case of property attached otherwise than by actual seizure in such places, if any, as the Tax Recovery Officer may direct.

40. Sale after fifteen days.—Except where the property is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, no sale of movable property under this Schedule shall without the consent in writing of the defaulter, take place until after the expiry of at least fifteen days calculated from the date on which a copy of the sale-proclamation was affixed in the office of the Tax Recovery Officer.

41. Sale of agricultural produce.—(1) Where the property to be sold is agricultural produce, the sale shall be held,—

- (a) if such produce is a growing crop—on or near the land on which such crop has grown, or
- (b) if such produce has been cut or gathered—at or near the threshing-floor or place for treading out grain or like, or fodder-stack, on or in which it is deposited :

Provided that the Tax Recovery Officer may direct the sale to be held at the nearest place of public resort, if he is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where on the produce being put up for sale,—

- (a) a fair price in the estimation of the person holding the sale, is not offered for it, and
- (b) the owner of the produce, or person authorised to act on his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day,

the sale shall be postponed accordingly, and shall be then completed, whatever price may be offered for the produce.

42. Special provisions relating to growing crop.—(1) Where the property to be sold is a growing crop and the crop from its nature admits of being

stored but has not yet been stored, the day of the sale be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored or can be sold to a greater advantage in an unripe stage (e.g. as green wheat), it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purposes of tending or cutting or gathering the crop.

43. Sale to be by auction.—The property shall be sold by public auction in one or more lots as the officer may consider advisable, and if the amount to be realised by sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder of the lots.

44. Sale by public auction.—(1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs and in default of payment the property shall forthwith be resold.

(2) On payment of the purchase-money, the officer holding the sale shall grant a certificate specifying the property purchased, the price paid and the name of the purchaser, and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the defaulter and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

45. Irregularity not to vitiate sale but any person injured may sue.—No irregularity in publishing or conducting the sale of movable property shall vitiate the sale but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a civil court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

46. Negotiable instruments and share in a corporation.—Notwithstanding anything contained in this Schedule, where the property to be sold is a negotiable instrument or a share in a corporation the Tax Recovery Officer may, instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker.

47. Order for payment of coin or currency notes to the Income-tax Officer.—Where the property attached is current coin or currency notes, the Tax Recovery Officer may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the certificate, be paid over to the Income-tax Officer.

PART III

ATTACHMENT AND SALE OF IMMOVABLE PROPERTY

ATTACHMENT

48. Attachment.—Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring or charg-

ing the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

49. Service of notice of attachment.—A copy of the order of attachment shall be served on the defaulter.

50. Proclamation of attachment.—The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Tax Recovery Officer.

51. Attachment to relate back from the date of service of notice.—Where any immovable property is attached under this Schedule, the attachment, shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this Schedule, was served upon the defaulter.

SALE

52. Sale and proclamation of sale.—(1) The Tax Recovery Officer may direct that immovable property which has been attached, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

(2) Where any immovable property is ordered to be sold, the Tax Recovery Officer shall cause a proclamation of the intended sale to be made in the language of the district.

53. Contents of proclamation.—A proclamation of sale of immovable property shall be drawn up after notice to the defaulter and shall state the time and place of sale, and shall specify as fairly and accurately as possible

- (a) the property to be sold ;
- (b) the revenue, if any, assessed upon the property or any part thereof ;
- (c) the amount for the recovery of which the sale is ordered ; and
- (d) any other thing which the Tax Recovery Officer considers it material for a purchaser to know in order to judge the nature and value of the property.

54. Mode of making proclamation.—Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the Office of the Tax Recovery Officer.

(2) Where the Tax Recovery Officer so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both ; and the cost of such publication shall be deemed to be costs of the sale.

(3) Where the property is divided into lots for the purposes of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Tax Recovery Officer, otherwise be given.

55. Time of sale.—No sale of immovable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the

expiration of at least thirty days calculated from the date on which a copy of the proclamation of sale has been affixed on the property or in the office of the Tax Recovery Officer, whichever is later.

56. Sale to be by auction.—The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer.

57. Deposit by purchaser and resale in default.—(1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be re-sold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.

58. Procedure in default of payment.—In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

59. Authority to bid.—All persons bidding at the sale be required to declare that they are bidding on their own behalf or on behalf of their principals. In the latter case, they shall be required to deposit their authority, and in default their bids shall be rejected.

60. Application to set aside sale of immovable property on deposit.—(1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing—

(a) for payment to the Income-tax Officer, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of six per cent per annum, calculated from the date of the proclamation of sale to the date when the deposit is made; and

(b) for payment to the purchaser, as penalty, a sum equal to five per cent of the purchase-money, but not less than one rupee.

(2) Where a person makes an application under rule 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

61. Application to set aside sale of immovable property on ground of non-service of notice or irregularity.—Where immovable property has been sold in execution of a certificate, the Income-tax Officer, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule or on the ground of a material irregularity in publishing or conducting the sale;

Provided that—

(a) no sale shall be set aside on any such ground unless the Tax Recovery Officer is satisfied that applicant has sustained substantial injury by reason of the non-service or irregularity ; and

(b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in execution of the certificate.

62. Setting aside sale where defaulter has no saleable interest.—At any time within thirty days of the sale, the purchaser may apply to the Tax Recovery Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property sold.

63. Confirmation of sale.—Where no application is made for setting aside the sale under the foregoing rules or where such an application is made and disallowed by the Tax Recovery Officer, the Tax Recovery Officer shall (if the full amount of the purchase-money has been paid) make an order confirming the sale, and, thereupon, the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to the persons affected thereby.

64. Return of purchase money in certain cases.—Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty, if any, deposited for payment to the purchaser, and such interest as the Tax Recovery Officer may allow, shall be paid to the purchaser.

65. Sale certificate.—(1) Where sale of immovable property has become absolute, the Tax Recovery Officer shall grant a certificate specifying the property sold, and the name of the person who at the time of sale is declared to be the purchaser.

(2) Such certificate shall state the date on which the sale became absolute.

66. Postponement of sale to enable defaulter to raise amount due under certificate.—(1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Tax Recovery Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease, or private sale of such property, or some part thereof, or of any other immovable property of the defaulter, the Tax Recovery Officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms and for such period as he thinks proper, to raise the amount.

(2) In such case, the Tax Recovery Officer shall grant a certificate to the defaulter, authorising him, within a period to be mentioned therein, and notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale :

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the defaulter, but to the Tax Recovery Officer :

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Tax Recovery Officer.

67. Fresh proclamation before resale.—Every resale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore provided for the sale.

68. Bid of co-share to have preference.—Where the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

PART IV

APPOINTMENT OF RECEIVER

69. Appointment of receiver for business.—(1) Where the property of a defaulter consists of a business, the Tax Recovery Officer may attach the business and appoint a person as receiver to manage the business.

(2) Attachment of business under this rule shall be made by an order prohibiting the defaulter from transferring or charging the business in any way and prohibiting all persons from taking any benefit under such transfer or charge, and intimating that the business has been attached under this rule. A copy of the order of attachment shall be served on the defaulter, and another copy shall be affixed on a conspicuous part of the premises in which the business is carried on and on the notice board of the office of the Tax Recovery Officer.

70. Appointment of receiver for immovable property.—Where immovable property is attached, the Tax Recovery Officer may, instead of directing a sale of the property, appoint a person as receiver to manage such property.

71. Powers of receiver.—(1) Where any business or other property is attached and taken under management under the foregoing rules, the receiver shall, subject to the control of the Tax Recovery Officer, have such powers as may be necessary for the proper management of the property and the realisation of the profits, or rents and profits, thereof.

(2) The profits, or rents and profits, of such business or other property, shall, after defraying the expenses of management, be adjusted towards discharge of the arrears, and the balance, if any, shall be paid to the defaulter.

72. Withdrawal of management.—The attachment and management under the foregoing rules may be withdrawn at any time at the discretion of the Tax Recovery Officer, or if the arrears are discharged by receipt of such profits and rents or are otherwise paid.

PART V

ARREST AND DETENTION OF THE DEFAULTER

73. Notice to show cause.—(1) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Tax Recovery Officer for reason recorded in writing, is satisfied—

(a) that the defaulter, with the object or effect of obstructing the execution of the certificate, has, after the receipt of the certificate in the office of the Tax Recovery Officer, dishonestly transferred, concealed or removed any part of his property, or

(b) that the defaulter has or has had since the receipt of the certificate in the office of the Tax Recovery Officer, the means to pay the arrears of some substantial part thereof refuses or neglects or has refused or neglected to pay the same.

(2) Notwithstanding anything contained in sub-rule (1), a warrant for the arrest of the defaulter may be issued by the Tax Recovery Officer if the Tax Recovery Officer is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate, the defaulter is likely to abscond or leave the local limits of the jurisdiction of the Tax Recovery Officer.

(3) Where appearance is not made in obedience to a notice issued and served under sub-rule (1), the Tax Recovery Officer may issue a warrant for the arrest of the defaulter.

(4) Every person arrested in pursuance of a warrant of arrest under sub-rule (2) or sub-rule (3) shall be brought before the Tax Recovery Officer as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey);

Provided that, if the defaulter pays the amount entered in warrant of arrest as due and the cost of the arrest to the officer arresting him, such officer shall at once release him.

74. Hearing.—When a defaulter appears before the Tax Recovery Officer in obedience to a notice to show cause or is brought before the Tax Recovery Officer under rule 73, the Tax Recovery Officer shall proceed to hear the Income-tax Officer and take all such evidence as may be produced by him in support of execution by arrest, and shall then give the defaulter an opportunity of showing cause why he should not be committed to the civil prison.

75. Custody pending hearing.—Pending the conclusion of the inquiry, the Tax Recovery Officer may, in his discretion, order the defaulter to be detained in the custody of such Officer as the Tax Recovery Officer may think fit or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance when required.

76. Order of detention.—(1) Upon the conclusion of the inquiry, the Tax Recovery Officer may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest :

Provided that in order to give the defaulter an opportunity of satisfying the arrears the Tax Recovery Officer may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding 15 days, or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance at the expiration of the specified period if the arrears are not so satisfied.

(2) When the Tax Recovery Officer does not make an order of detention under sub-rule (1), he shall, if the defaulter is under arrest, direct his release.

77. Detention in and release from prison.—(1) Every person detained in the civil prison in execution of a certificate may be so detained,—

(a) where the certificate is for a demand of an amount exceeding two hundred and fifty rupees for a period of six months, and

(b) in any other case for a period of six weeks ;

Provided that he shall be released from such detention—

(i) on the amount mentioned in the warrant for his detention being paid to the Officer-in-charge of the civil prison ; or

(ii) on the request of the Income-tax Officer who has issued the certificate or the Tax Recovery Officer on any ground other than the grounds mentioned in rules 78 and 79 :

Provided that where he is to be released on the request of the Income-tax Officer, he shall not so be released without the order of the Tax Recovery Officer.

(2) A defaulter released from detention under this rule shall not merely by reason of his release, be discharged from his liability for the arrears, but he shall not be liable to be re-arrested under the certificate in execution of which he was detained in the civil prison.

78. Release.—(1) The Tax Recovery Officer may order the release of a defaulter who has been arrested in execution of a certificate upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Tax Recovery Officer and that he has not committed any act of bad faith.

(2) If the Tax Recovery Officer has ground for believing the disclosure made by a defaulter under sub-rule (1) to have been untrue, he may order the re-arrest of the defaulter in execution of the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 77.

79. Release on ground of illness.—(1) At any time after a warrant for the arrest of a defaulter has been issued, the Tax Recovery Officer, may cancel it on the ground of his serious illness.

(2) Where a defaulter has been arrested, the Tax Recovery Officer may release him if, in the opinion of the Tax Recovery Officer, he is not in a fit state of health to be detained in the civil prison.

(3) Where a defaulter has been committed to the civil prison, he may be released therefrom by the Tax Recovery Officer on the ground of the existence of any infectious or contagious disease, or on the ground of his suffering from any serious illness.

(4) A defaulter released under this rule may be re-arrested, but the period of his detention in the civil shall not in the aggregate exceed that authorised by rule 77.

80. Entry into dwelling house.—For the purpose of making an arrest under this Schedule—

(a) no dwelling house shall be entered after sun-set and before sun-rise ;

(b) no outer door of a dwelling house shall be broken open unless such dwelling house or a portion thereof is in the occupancy of the defaulter and he or other occupant of the house refuses or in any way prevents access thereto ; but when the person executing any such warrant has duly gained access to any dwelling house, he may break open the door of any room or apartment if he has reason to believe that the defaulter is likely to be found there ;

(c) no room, which is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, shall be entered unless the officer authorised to make the arrest has given notice to her that she is at liberty to withdraw and has given her reasonable time and facility for withdrawing.

81. Prohibition against arrest of women or minors etc.—The Tax Recovery Officer shall not order the arrest and detention in the civil prison of—

(a) a woman, or

(b) any person who, in his opinion, is a minor or of unsound mind.

PART VI

MISCELLANEOUS

82. Officer deemed to be acting judicially.—Every Tax Recovery Officer or other officer acting under this Schedule shall in the discharge of his functions under this Schedule, be deemed to be acting judicially within the meaning of the judicial Officer's Protection Act, 1850 (18 of 1850).

83. Power to take evidence.—Every Tax Recovery Officer or other officer acting under the provisions of this Schedule shall have the powers of a civil court while trying a suit for the purpose of receiving evidence, administering oaths, enforcing the attendance of witness and compelling the production of documents.

84. Continuance of certificate.—No certificate shall cease to be in force by reason of the death of the defaulter.

85. Procedure on death of defaulter.—If at any time after the issue of the certificate by the Income-tax Officer to the Tax Recovery Officer the default-

ter dies, the proceedings under this Schedule (except arrest and detention) may be continued against the legal representative of the defaulter, and the provisions of this Schedule shall apply as if the legal representative were the defaulter.

86. Appeals.—(1) An appeal from any original order passed by the Tax Recovery Officer under this Schedule, not being an order which is conclusive, shall lie—

(a) in the case of a Tax Recovery Officer, being a Collector or an Additional Collector or an officer referred to in sub-clause (iii) of clause 44 of Section 2, to the revenue authority to which appeals ordinarily lie against the orders of a Collector under the law relating to land revenue of the State concerned, and

(b) in any other case, to the revenue authority to which an appeal or an application for revision would ordinarily lie, if the order passed by him were the order under the law relating to the revenue or other public demand for the time being in force in the State concerned.

(2) Every appeal under this rule must be presented within thirty days from the date of the order appealed against.

(3) Pending the decision of any appeal, execution of the certificate may be stayed if the appellate authority so directs but not otherwise.

87. Review. Any order passed under this Schedule may, after notice to all persons interested, be reviewed by the officer who made the order, or by his successor in office, on account of any mistake apparent from the record.

88. Recovery from surety.—Where any person has under this Schedule become surety for the amount due by the defaulter, he may be proceeded against under this Schedule as if he were the defaulter.

89. Penalties.—Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein, from being taken in execution of a certificate, shall be deemed to have committed an offence punishable under Section 206 of the Indian Penal Code (45 of 1860).

90. Subsistence allowance.—(1) When a defaulter is arrested or detained in the civil prison, the sum payable for the subsistence of the defaulter from the time of arrest until he is released shall be borne by the Income-tax Officer.

(2) Such sum shall be calculated on the scale fixed by the State Government for the subsistence of judgement-debtors arrested in execution of a decree of a civil court.

(3) Sums payable under this rule shall be deemed to be costs in the proceeding :

Provided that the defaulter shall not be detained in the civil prison or arrested on account of any sum so payable.

91. Forms.—The Board may prescribe the form to be used for any order, notice, warrant or certificate to be issued under this Schedule.

92. Power to make rules.—(1) The Board may make rules, consistent with the provisions of this Act, regulating the procedure to be followed by Tax Recovery Officers and other officers acting under this Schedule.

(2) In particular, and without prejudice to the generality of this power conferred by sub-rule (1), such rules may provide for all or any of the following matters, namely—

- (a) the area within which Tax Recovery Officers may, exercise jurisdiction ;
- (b) the manner in which any property sold under this Schedule may be delivered ;
- (c) the execution of a document or the endorsement of a negotiable instrument or a share in a corporation, by or on behalf of the Tax Recovery Officer, where such execution or endorsement is required to transfer such negotiable instrument or share to a person who has purchased it under a sale under this Schedule ;
- (d) the procedure for dealing with resistance or obstruction offered by any person to a purchaser of any immovable property sold under this Schedule, in obtaining possession of the property ;
- (e) the fees to be charged for any process issued under this Schedule ;
- (f) the scale of charges to be recovered in respect of any other proceeding taken under this Schedule ;
- (g) recovery of poundage fee ;
- (h) the maintenance and custody, while, under attachment, of livestock or other movable property, the fees to be charged for such maintenance and custody, the sale of such livestock or property, and the disposal of proceeds of such sale ;
- (i) the mode of attachment of business.

93. Saving regarding charge.—Nothing in this Schedule shall affect any provision of this Act whereunder tax is a first charge upon any asset.

THE THIRD SCHEDULE

PROCEDURE FOR DISTRAINT BY INCOME-TAX OFFICER

[See Section 226 (5)]

Distraint and sale.—Where any distraint and sale of movable property are to be effected by any Income-tax Officer authorised for the purpose, such distraint and sale shall be made, as far as may be, in the same manner as attachment and sale of movable property attachable by actual seizure, and the provisions, of the Second Schedule relating to attachment and sale shall, so far as may be, apply in respect of such distraint and sale.

THE FOURTH SCHEDULE

PART A

RECOGNISED PROVIDENT FUNDS

[See Sections 2(38), 10(12), 36(1)(iv), 87(1)(d), 111, 192(4)]

1. Application of Part.—This part shall not apply to any provident fund to which the Provident Funds Act, 1925 (19 of 1925), applies.

2. Definition.—In this Part, unless the context otherwise requires,—

(a) “employer” means any person who maintains a provident fund for the benefit of his or its employees, being—

(i) a Hindu undivided family, company, firm or other association of persons, or

(ii) an individual engaged in a business or profession the profits and gains whereof are assessable to income-tax under the head “Profits and gains of business or profession”;

(b) “employee” means an employee participating in a provident fund, but does not include a personal or domestic servant;

(c) “contribution” means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest;

(d) “balance to credit of an employee” means the total amount to the credit of his individual account in a provident fund at any time;

(e) “annual accretion” in relation to such balance to the credit of an employee, means the increase to such balance in any year, arising from contributions and interest;

(f) “accumulated balance due to an employee” means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund;

(g) “regulations of a fund” means the special body or regulations governing the constitution and administration of a particular provident fund; and

(h) “salary” includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.

3. According and withdrawal of recognition.—(1) The Commissioner may accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in rule 4 and the rules made by the Board in this behalf; and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions.

(2) An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Board may take in this

behalf, such date not being later than the last day of the financial year in which the order is made.

(3) An order withdrawing recognition shall take effect from the date on which it is made.

(4) An order according to a provident fund shall not unless the Commissioner otherwise directs, be affected by the fact that the fund is subsequently amalgamated with another provident fund on the occurrence of an amalgamation of the undertaking in connection with which the two funds are maintained, or that it subsequently absorbs the whole or a part of another provident fund belonging to an undertaking which is wholly or in part transferred to or merged in the undertaking of the employer maintaining the first-mentioned fund.

4. Conditions to be satisfied by recognised provident funds.—In order that a provident fund may receive and retain recognition, it shall, subject to the provisions of rule 5, satisfy the conditions set out below and any other conditions which the Board may, by rules specify—

(a) all employees shall be employed in India, or shall be employed by an employer whose principal place of business is in India,

(b) the contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund;

(c) the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year,

(d) the fund shall be vested in two or more trustees or in the Official Trustee under a trust which shall not be revocable, save with the consent of all the beneficiaries;

(e) the fund shall consist of contributions as above specified, received, by the trustees, of accumulations thereof, and of interest credited in respect of such contributions and accumulations, and of securities purchased therewith and of any capital gains arising from the transfer of capital assets of the fund, and of no other sums;

(f) the employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of term of service specified in this behalf in the regulations of the fund:

Provided that in such cases recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest credited in respect of such contributions in accordance with the regulations thereof;

(g) the accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund;

(h) save as provided in clause (g) or in accordance with such conditions and restrictions as the Board may, by rules, specify, no portion of the balance to the credit of an employee shall be payable to him.

5. Relaxation of conditions.—(1) Notwithstanding anything contained in clause (a) of rule 4 the Commissioner may, if he thinks fit, and subject to such conditions, if any, as he thinks proper to attach the recognition, accord recognition to a fund maintained by an employer whose principal place of business is not in India, provided the proportion of employees employed outside India does not exceed ten per cent.

(2) Notwithstanding anything contained in clause (b) of rule 4, an employee who retains his employment while serving in the armed forces of the Union or when taken into or employed in the national service under any law for the time being in force, may, whether he receives from the employer any salary or not, contribute to the fund during his service in the armed forces of the Union or while so taken into or employed in the national service a sum not exceeding the amount he would have contributed had he continued to serve the employer.

(3) Notwithstanding anything contained in clause (e) or clause (g) of rule 4—

(a) at the request made in writing by the employee who ceases to be an employee of the employer maintaining the fund, the trustees of the fund may consent to retain the whole or any part of the accumulated balance due to the employee to be drawn by him at any time on demand ;

(b) where the accumulated balance due to an employee who has ceased to be an employee is retained in the fund in accordance with the preceding clause, the fund may consist also of interest in respect of such accumulated balance.

(4) Subject to any rule which the Board may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of clause (c) of rule 4

(a) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salaries do not in each case exceed five hundred rupees per mensem ; and

(b) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

(5) Notwithstanding anything contained in clause (h) of rule 4, in order to enable an employee to pay the amount of tax assessed on his total income as determined under sub-clause (4) of rule 11, he shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance referred to in sub-rule (2) of rule 11 had not been included in his total income.

6. Employer's annual contributions, when deemed to be income received by employee.—The portion of the annual accretion in any previous year to

the balance at the credit of an employee participating in a recognised provident fund as consists of—

(a) contributions made by the employer in excess of ten per cent of the salary of the employee, and

(b) interest credited on the balance to the credit of the employee in so far as it exceeds one-third of the salary of the employee or is allowed at a rate exceeding such rate as may be fixed by the Central Government in this behalf by notification in the Official Gazette,

shall be deemed to have been received by the employee in that previous year and shall be included in his total income for that previous year, and shall be liable to income-tax.

7. Exemption for employee's contributions.—An employee participating in recognised provident fund shall, in respect of his own contributions to his individual account in the fund in the previous year, be entitled to a deduction in the computation of his total income of an amount determined in accordance with Section 80C.

8. Exclusion from total income of accumulated balance.—The accumulated balance due and becoming payable to an employee participating in a recognised provident fund shall be excluded from the computation of his total income—

(i) if he has rendered continuous service with his employer for a period of five years or more, or

(ii) if, though he has not rendered such continuous service, the service has been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employer's business or other cause beyond the control of the employee.

9. Tax on accumulated balance.—(1) Where the accumulated balance due to an employee participating in a recognised provident fund is included in his total income owing to the provisions of rule 8 not being applicable the Income-tax Officer shall calculate the total of the various sums of income-tax which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognised provident fund, and the amount by which such total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to any other income-tax for which he may be liable for the previous year in which the accumulated balance due to him becomes payable.

(2) Where the accumulated balance due to an employee participating in a recognised provident fund which is not included in his total income under the provisions of rule 8 becomes payable, an amount equal to the aggregate of the amounts of super-tax on annual accretions that would have been payable under Section 58E of the Indian Income-tax Act 1922, (11 of 1922), for any assessment year up to and including the assessment year 1932-1933, if the Indian Income-tax (Second Amendment) Act, 1933, (18 of 1933), had come into force on the 15th day of March, 1930, shall be payable by him for the previous year in which such balance becomes payable.

10. Deduction at source of tax payable on accumulated balance.—The trustees of a recognised provident fund, or any person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, in cases where sub-rule (1) of rule 9 applies at the time an accumulated balance due to an employee is paid, deduct therefrom the amount payable under that rule and all the provisions of Chapter XVII-B shall apply as if the accumulated balance were income chargeable under the head "Salaries".

11. Treatment of balance in newly recognised provident fund.—(1) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day immediately preceding the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Board may prescribe.

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund, and such amount (hereinafter called the transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-rule (4) of this rule and sub-rule (5) of rule 5 shall apply thereto.

(3) Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the account of the recognised fund and shall be liable to income-tax in accordance with the provisions of this Act, other than this Part.

(4) Subject to such rules as the Board may make in this behalf, the Income-tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Part had been in force from the date of the institution of the fund, without regard to any tax which may have been paid on any sum, and such aggregate (if any) shall be deemed to be income received by the employee in the previous year in which the recognition of the fund takes effect and shall be included in the employee's total income for that previous year, and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance:

Provided that, in cases of serious accounting difficulty, the Commissioner may, subject to the said rules, make a summary calculation of such aggregate.

(5) Nothing in this rule shall affect the rights of the persons administering an unrecognised provident fund or dealing with it, or with the balance to the credit of any individual employee before recognition is accorded, in any manner which may be lawful.

12. Accounts of recognised provident funds.—(1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars, as the Board may prescribe.

(2) The accounts shall be open to inspection at all reasonable times by Income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Board may prescribe.

13. Appeals.—(1) An employer objecting to an order of the Commissioner refusing to recognise or an order withdrawing recognition from a provident fund may appeal, within sixty days or such order, to the Board.

(2) The appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as the Board may prescribe.

14. Treatment of fund transferred by employer to trustee.—Where an employer, who maintains a provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustees in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustees (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall, if the employer has made effective arrangements to secure that tax shall be deemed to be an expenditure by the employer within the meaning of Section 37, incurred in the previous year in which the accumulated balance due to the employee is paid.

15. Provisions relating to rules.—(1) In addition to any power conferred by this Part, the Board may make rules—

(a) prescribing the statements and other information to be submitted along with an application for recognition;

(b) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company;

(c) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creating of a share upon, his beneficial interest in a recognised provident fund;

(d) determining the extent to and the manner in which exemption from payment of tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn; and

(e) generally, to carry out the purposes of this Part and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as it may deem requisite.

(2) All rules made under this Part shall be subject to the provisions of Section 296.

PART B

APPROVED SUPER-ANNUATION FUNDS

[See Sections 2(6), 10(25)(iii), 36(1)(iv), 80C(2)(e) 192(5), 206(2)]

1. Definitions.—In this Part, unless the context otherwise requires, "employer", "employee", "contribution" and "salary" have in relation to super-

annuation funds, the meanings assigned to those expressions in rule 2 of Part A in relation to provident funds.

2. Approval and withdrawal of approval.—The Commissioner may accord approval to any super-annuation fund or any part of a super-annuation fund which, in his opinion, complies with the requirements of rule 3, and may at any time withdraw such approval, if in his opinion, the circumstances of the fund or part cease to warrant the continuance of the approval.

(2) Commissioner shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.

(3) The Commissioner shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The Commissioner shall neither refuse nor withdraw approval to any super-annuation fund or any part of a super-annuation fund unless he has given the trustees of that fund a reasonable opportunity of being heard in the matter.

3. Condition; for approval.—In order that a super-annuation fund may receive and retain approval, it shall satisfy the conditions set out below and any other conditions which the Board may, by rules, prescribe—

(a) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in India, and not less than ninety per cent of the employees shall be employed in India;

(b) the fund shall have for its sole purpose the provisions of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or for the widows, children or dependents of persons who are or have been such employees on the death of those persons;

(c) the employer in the trade or undertaking shall be a contributor to the fund; and

(d) all annuities, pensions and other benefits granted from the fund shall be payable only in India.

4. Application for approval.—(1) An application for approval of a super-annuation fund or part of a super-annuation fund shall be made in writing by trustees of the fund to the Income-tax Officer by whom the employer is assessable, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up, but the Commissioner may require such further information to be supplied as he thinks proper.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Income-tax Officer mentioned in sub-rule (1), and in default of such communication any approval given shall, unless the Commissioner otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

5. Contribution by employer, when deemed to be income of employer.—

Where any contributions by an employer (including the interest thereon, if any) are repaid to the employer, the amount so repaid shall be deemed for the purpose of income-tax to be the income of the employer of the previous year in which it is so repaid.

6. Deduction of tax on contributions paid to an employee.—Where any contributions made by an employer, including interest on contributions, if any, are paid to employee during his lifetime, in circumstances other than those referred to in clause (13) of Section 10, tax on the amounts so paid shall be deducted at the average rate of tax at which the employee was liable to tax during the preceding three years or during the period, if less than three years, when he was a member of the fund and shall be paid by the trustees to the credit of the Central Government within the prescribed time and in such manner as the Board may direct.

7. Deduction from pay of and contributions on behalf of employee to be included in return.—Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved super-annuation fund, he shall include all such deductions or payments in the return which he is required to furnish under sub-section (1) of Section 206.

8. Appeals.—(1) An employer objecting to an order of the Commissioner refusing to accord approval to a super-annuation fund or an order withdrawing such approval may appeal, within sixty days of such order, to the Board.

(2) The appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as may be prescribed.

9. Liability of trustees on cessation of approval.—If a fund or a part of a fund for any reason ceases to be an approved super-annuation fund, the trustees of the fund shall nevertheless remain liable to tax on any sum paid on account of returned contributions (including interest on contribution, if any), in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved super-annuation fund under the provisions of this Part.

10. Particulars to be furnished in respect of super-annuation funds.—The trustees of an approved super-annuation fund and any employer who contributes to an approved super-annuation fund shall, when required by notice from the Income-tax Officer, within such period, not being less than twenty-one days from the date of the notice, as may be specified in the notice, furnish such return, statement, particulars or information, as the Income-tax Officer may require.

11. Provision relating to rules.—(1) In addition to any power conferred by this Part, the Board may make rules—

(a) prescribing the statements and other information to be submitted along with an application for approval;

(b) prescribing the returns, statements, particulars, or information which the Income-tax Officer may require from the trustees of an approved super-annuation fund or from the employer;

(c) limiting the ordinary annual contribution and any other contributions to an approved super-annuation fund by an employer;

(d) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in an approved super-annuation fund ;

(e) determining the extent to, and the manner in, which exemption from payment of tax may be granted in respect of any payment made from a super-annuation fund from which approval has been withdrawn ;

(f) providing for withdrawal of approval in the case of a fund which ceases to satisfy the requirements of this Part or of the rules made thereunder ; and

(g) generally, to carry out the purposes of this Part and to secure such further control over the approval of super-annuation funds and the administration of approved super-annuation funds as it may deem requisite.

(2) All rules made under this Part shall be subject to the provisions of Section 296.

PART C

APPROVED GRATUITY FUNDS

[See Sections 2(5), 17(1)(iii), 36(1)(v)]

1. Definitions.—In this Part, unless the context otherwise requires, “employer”, “employee”, “contribution” and “salary” have, in relation to gratuity funds, the meanings assigned to those expressions in rule 2 of Part A in relation to provident funds.

2. Approval and withdrawal of approval.—(1) The Commissioner may accord approval to any gratuity fund which, in his opinion, complies with the requirements of rule 3 and may at any time withdraw such approval if, in his opinion, the circumstances of the fund cease to warrant the continuance of the approval.

(2) The Commissioner shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and where the approval is granted subject to conditions, those conditions.

(3) The Commissioner shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The Commissioner shall neither refuse nor withdraw approval to any gratuity fund unless he has given the trustees of the fund a reasonable opportunity of being heard in the matter.

3. Conditions for Approval.—In order that a gratuity fund may receive and retain approval, it shall satisfy the conditions set out below and any other conditions which the Board may, by rules, prescribe—

(a) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in India and not less than ninety per cent of the employees shall be employed in India ;

(b) the fund shall have for its sole purpose the provision of a gratuity to employees in the trade or undertaking on their becoming incapacitated prior to such retirement or on termination of their employment after a minimum period of service specified in the rules of the fund or to the widows, children or dependents of such employees on their death ;

(c) the employer in the trade or undertaking shall be a contributor to the fund ; and

(d) all benefits granted by the fund shall be payable only in India.

4. Application for approval.—(1) An application for approval of a gratuity fund shall be made in writing by the trustees of the fund to the Income-tax Officer by whom the employer is assessable and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last three years for which such accounts have been made up, but the Commissioner may require such further information to be supplied as he thinks proper.

(2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alterations to the Income-tax Officer mentioned in sub-rule (1), and in default of such communication, any approval given shall, unless the Commissioner otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

5. Gratuity deemed to be salary.—Where any gratuity is paid to an employee during his lifetime, the gratuity shall be treated as salary paid to the employee for the purposes of this Act.

6. Liability of trustees on cessation of approval.—If a gratuity fund for any reason ceases to be an approved gratuity fund, the trustees of the fund shall nevertheless remain liable to tax on any gratuity paid to any employee.

7. Contributions by employer, when deemed to be income of employer.—When any contributions by an employer (including the interest thereon, if any) are repaid to the employer, the amount so repaid shall be deemed for the purposes of income-tax to be the income of the employer of the previous year in which they are so repaid.

8. Appeals.—(1) An employer objecting to an order of the Commissioner refusing to accord approval to a gratuity fund or an order withdrawing such approval may appeal, within sixty days of such order, to the Board.

(2) The appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as may be prescribed.

9. Provisions relating to rules.—(1) In addition to any power conferred in this Part, the Board may make rule—

(a) prescribing the statements and other information to be submitted along with an application for approval ;

(b) limiting the ordinary annual and other contributions of an employer to the fund ;

(c) providing for the assessment by way of penalty of any consideration received by an employee for an assessment of, or the creation of a charge upon, his beneficial interest in an approved gratuity fund ;

(d) providing for the withdrawal of the approval in the case of a fund which ceases to satisfy the requirements of this Part or the rules made thereunder ;

(e) generally to carry out the purposes of this Part and to secure such further control over the approval of gratuity funds and administration of gratuity funds as it may deem requisite.

(2) All rules made under this Part shall be subject to the provisions of Section 296.

THE FIFTH SCHEDULE

[See Section 33(1)(b)(B)(i)]

List of articles and things

- (1) Iron and steel (metal) ferro-alloys and special steels.
- (2) Aluminium, copper, lead and zinc (metals).
- (3) Coal, lignite iron ore, bauxite, manganese ore, dolomite, limestone, magnesite and mineral oil.
- (4) Industrial machinery specified under the heading "8, Industrial machinery", sub-heading "A, Major items of specialised equipment used in specific industries" of the First Schedule to the Industries (Development and Regulation) Act, 1951.
- (5) Boilers and steam engines and turbines and internal combustion engines.
- (6) Flame and drip proof motors.
- (7) Equipment for the generation and transmission of electricity including transformation, cables, and transmission towers.
- (8) Machine tools and precision tools (including their attachments and accessories cutting tools and small tools), dies and jigs.
- (9) Tractors, earth-moving machinery and agricultural implements.
- (10) Motor trucks and buses.
- (11) Steel castings and forgings and malleable iron and steel castings.
- (12) Cement and refractories.
- (13) Fertiliser, namely, ammonium sulphate, ammonium sulphate nitrate (double salt), ammonium nitrate, calcium ammonium nitrate (nitrolime stone), ammonium chloride, super phosphate, urea and complex fertilisers of synthetic origin containing both nitrogen and phosphorous, such as ammonium phosphates, ammonium sulphate phosphate and ammonium nitro-phosphate.
- (14) Soda ash.
- (15) Pesticides.
- (16) Paper and pulp, including newsprint.

(17) Electronic equipment, namely, radar equipment, computers, electronic accounting and business machines, electronic communication equipment, electronic control instruments and basic components, such as valves, transistors, resistors, condensers, coils, magnetic materials and micro wave components,

(18) Petrochemicals including corresponding products manufactured from other basic raw materials like calcium carbide, ethyl alcohol or hydrocarbons from other sources.

(19) Ships.

(20) Automobile ancillaries.

(21) Seamless tubes.

(22) Gears.

(23) Ball, roller and tapered bearings.

(24) Component parts of the articles mentioned in items Nos (4), (5), (7) and (9), that is to say, such parts as are essential for the working of the machinery referred to in the items aforesaid and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose and are in complete finished form and ready for fitment.

(25) Cotton seed oil.

(26) Tea.

(27) Printing machinery.

(28) Processed seeds.

(29) Processed concentrates for cattle and poultry feed.

(30) Processed (including frozen) fish products.

(31) Vegetable oils and oil-cakes manufactured by the solvent extraction process from seeds other than cotton seed.

(32) Textiles, (including those dyed, printed or otherwise processed) made wholly or mainly of cotton, including cotton yarn, hosiery and rope.

(33) Textiles (including those dyed, printed or otherwise processed) made wholly or mainly of jute, including jute twine and jute rope.

THE SIXTH SCHEDULE

[See Sections 80B(7), 80-I and 80M]

List of articles and things

(1) Iron and steel (metal), ferro-alloys and special steels.

(2) Aluminium, copper, lead and zinc (metals).

(3) Coal, lignite, iron ore, bauxite, manganese ore, dolomite, limestone, magnesite and mineral oil.

(4) Industrial machinery specified under the heading "8. Industrial machinery" sub-heading "A. Major items of specialised equipment used in

specific industries" of the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951).

(5) Boilers and steam generating plants, steam engines and turbines and internal combustion engines.

(6) Flame and drip proof motors.

(7) Equipment for the generation and transmission of electricity including transformers, cables, and transmission towers.

(8) Machine tools and precision tools (including their attachments and accessories, cutting tools and small tools), dies and jigs.

(9) Tractors, earth-moving machinery and agricultural implements.

(10) Motor trucks and buses.

(11) Steel castings and forgings and malleable iron and steel castings.

(12) Cement and refractories.

(13) Fertilisers, namely, ammonium sulphate, ammonium sulphate nitrate (double salt), ammonium nitrate calcium ammonium nitrate (nitrolime stone), ammonium chloride, super phosphate urea and complex fertilisers of synthetic origin containing both nitrogen and phosphorus such as ammonium phosphate, ammonium sulphate phosphate and ammonium nitro phosphate.

(14) Soda ash.

(15) Pesticides.

(16) Paper and pulp including newspaper

(17) Electronic equipment, namely radar equipment, computers, electronic accounting and business machines, electronic communication equipment, electronic control instruments and basic components, such as valves transistors, resistors, condensers coils, magnetic materials and micro wave components.

(18) Petrochemicals including corresponding products manufactured from other basic raw materials like calcium carbide, ethyl alcohol or hydrocarbons from other sources.

(19) Ships.

(20) Automobile ancillaries.

(21) Seamless tubes.

(22) Gears.

(23) Ball, roller and tapered bearings.

(24) Component parts of the articles mentioned in items Nos (4), (5), (7) and (9) that is to say, such parts as are essential for the working of the machinery referred to in the items aforesaid and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose and are in complete finished form and ready for fitment.

(25) Cotton seed oil.

(26) Tea.

(27) Printing machinery.

(28) Processed seeds.

THE COMPANIES (PROFITS) SURTAX ACT, 1964

(Act No. 7 of 1964)

[As amended up to the 30th June, 1970]

BE it enacted by Parliament in the Fifteenth Year of the Republic of India as follows :

1. Short title and extent.—(1) This act may be called the Companies (Profits) Surtax Act, 1964.

(2) It extends to the whole of India.

2. Definitions.—In this Act, unless the context otherwise requires,--

(1) "assessee" means a person by whom surtax or any other sum of money is payable under this Act and includes every person in respect of whom any proceeding under this Act has been taken for the assessment of his chargeable profits or of the amount of refund due to him or of the chargeable profits of any other person in respect of which he is assessable or of the amount of refund due to such other person ;

(2) "assessment" includes re-assessment ;

(3) "assessment year" means the period of twelve months commencing on the 1st day of April, every year ;

(4) "Board" means the Central Board of Direct taxes constituted under the Central Boards of Revenue Act, 1963 ;

(5) "chargeable profits" means the total income of an assessee computed under the Income-tax Act 1961 for any previous year or years, as the case may be, and adjusted in accordance with the provisions of the First Schedule ;

(6) "Income-tax Act" means the Income-tax Act, 1961 ;

(7) "prescribed" means prescribed by rules made under this Act ;

(8) "statutory deduction" means an amount equal to ten per cent of the capital of the company as computed in accordance with the provisions of the Second Schedule, or an amount of two hundred thousand rupees, whichever is greater :

Provided that where the previous year is longer or shorter than a period of twelve months, the aforesaid amount of ten per cent or, as the case may be, of two hundred thousand rupees shall be increased or decreased proportionately ;

Provided further that where a company has different previous years in respect of its income, profits and gains, the aforesaid increase or decrease, as the case may be, shall be calculated with reference to the length of the previous year of the longest duration ; and

(9) all other words and expressions used herein but not defined and defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.

3. Tax authorities.—(1) Every Director of Inspection, Commissioner of Income-tax Appellate Assistant Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax, Income-tax Officer and Inspector of

Income-tax shall have the like powers and perform the like functions, under this Act as he has and performs under the Income-tax Act, and for the exercise of his powers and the performance of his functions, his jurisdiction under this Act will be the same as he has under the Income-tax Act.

(2) All officers and persons employed in the execution of this Act, shall observe and follow the orders, instructions and directions of the Board :

Provided that no such orders, instruction or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercises of the appellate functions.

(3) Every Income-tax Officer, employed in the execution of this Act, shall observe and follow the orders, instructions and directions issued for his guidance by the Director of Inspection or by the Commissioner or by the Inspecting Assistant Commissioner under whose jurisdiction he performs his functions.

4. Charge of tax. Subject to the provisions contained in this Act, there shall be charged on every company for every assessment year commencing on and from the first day of April, 1964, a tax (in this Act referred to as the surtax) in respect of so much of its chargeable profits of the previous year or of two years, as the case may be, as exceed statutory deduction, at rate or rates specified in the Third Schedule.

5. Return of chargeable profits.—(1) In the case of every company whose chargeable profits assessable under this Act exceeded during the previous year the amount of statutory deduction, its principal officer, or in the case of a non-resident company any person has been treated as its agent under Section 163 of the Income-tax Act, such person, shall furnish a return of the chargeable profits of the company during the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, before the 30th day of September of the assessment year :

Provided that on an application made in this behalf, the Income-tax Officer may in his discretion, extend the date for the furnishing of the return.

(2) In the case of any company which in the Income-tax Officer's opinion is assessable under this Act, the Income-tax Officer may before the end of the relevant assessment year, serve a notice upon its principal officer, or where in the case of a non-resident company any person has been treated as its agent under Section 163 of the Income-tax Act, upon such person, requiring him to furnish within thirty days from the date of service of the notice a return of the chargeable profits of the company during the previous year in the prescribed form verified in the prescribed manner and setting forth such other particulars as may be prescribed :

Provided that on an application made in this behalf, the Income-tax Officer may, in his discretion extend the date for the furnishing of the return.

(3) Any assessee who has not furnished a return during the time allowed under sub-section (1) or sub-section (2), or having furnished a return under sub-section (1) or sub-section (2) discovers any omission or wrong statement therein, may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

6. Assessment.—(1) For the purposes of making an assessment under this Act, the Income-tax Officer may serve on any person who has furnished a

return under sub-section (1) of Section 5 or upon whom a notice has been served under sub-section (2) of Section 5 (whether a return has been furnished or not) a notice requiring him on a date therein to be specified to produce or cause to be produced such accounts or documents or evidence as the Income-tax Officer may require for the purpose of this Act and may, from time to time, serve further notices requiring the production of such further accounts or documents or other evidence as he may require.

(2) The Income-tax Officer, after considering such accounts, documents or evidence, if any, as he has obtained under sub-section (1) and after taking into account any relevant material which he has gathered, shall, by an order in writing, assess the chargeable profits, and the amount of surtax payable on the basis of such assessment.

7. Provisional assessment.—(1) The Income-tax Officer, before proceeding to make an assessment under Section 6 (in this section referred to as the regular assessment) may, at any time after the expiry of period allowed under sub-section (1) or sub-section (2) of Section 5 for the furnishing of the return and whether the return has or has not been furnished, proceed to make in a summary manner a provisional assessment of the chargeable profits and the amount of the surtax payable thereon;

(2) Before making such provisional assessment, the Income-tax Officer shall give notice in the prescribed form to the person on whom the provisional assessment is to be made of his intention to do so, and shall with the notice forward a statement of the amount of the proposed assessment, and the said person shall be entitled to deliver to the Income-tax Officer at any time within fourteen days of the service of the said notice a statement of his objection, if any, to the amount of the proposed assessment.

(3) On expiry of the said fourteen days from date of service of the notice referred to in sub-section (2), or earlier, if the assessee agrees to the proposed provisional assessment the Income-tax Officer may, after taking into account the objections, if any, made under sub-section (2), make a provisional assessment and shall furnish a copy of the order of the assessment to the assessee:

Provided that assessment to the amount of the provisional assessment, or failure to make objection to it, shall in no way prejudice the assessee in relation to the regular assessment.

(4) There shall be no right of appeal against provisional assessment made under this section.

(5) After a regular assessment has been made any amount paid or deemed to have been paid towards the provisional assessment made under this section shall be deemed to have been paid towards the regular assessment; and where the amount paid or deemed to have been paid towards the provisional assessment exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee.

8. Profits escaping assessment.—If—

(a) the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of the assessee to make a return under Section 5 for any assessment year or to disclose fully and truly all material facts necessary for his assessment for any assessment year, chargeable profits for that

year have escaped assessment or have been under-assessed or assessed at too low a rate or have been made, the subject of excessive relief under this Act, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that chargeable profits assessable for any assessment year have escaped assessment or have been under-assessed or assessed at too low a rate or have the subject of excessive relief under this Act,

he may, in cases falling under clause (a) at any time and in cases falling under clause (b) at any time within four years of the end of that assessment year serve on the assessee a notice containing all or any of the requirements which may be included in a notice under Section 5, and may proceed to assess or reassess the amount chargeable to surtax, and provisions of this Act shall so far as may be, apply as if the notice were a notice issued under that section.

9. Penalties.—If the Income-tax Officer, in the course of any proceedings under this Act, is satisfied that any person has, without reasonable cause, failed to furnish the return required under Section 5, or to produce or cause to be produced the accounts, documents or other evidence required by the Income-tax Officer under sub-section (1) of Section 6, or has concealed the particulars of the chargeable profits or has furnished inaccurate particulars of such profits, he may direct that such person shall pay, by way of penalty, in addition to the amount of surtax payable, a sum not exceeding—

(a) where the person has failed to furnish the return required under Section 5, the amount of surtax payable ;

(b) in any other case, the amount of surtax which would have been avoided if the return made had been accepted as correct :

Provided that the Income-tax Officer shall not impose any penalty under this section without the previous authority of the Inspecting Assistant Commissioner.

10. Opportunity of being heard.—No order imposing a penalty under Section 9 shall be made unless the assessee has been given reasonable opportunity of being heard.

11. Appeals to the Appellate Assistant Commissioner.—(1) Any person objecting to the amount of surtax for which he is liable as assessed by the Income-tax Officer or denying his liability to be assessed under this Act or objecting to any penalty or fine imposed by the Income-tax Officer, or to the amount allowed by the Income-tax Officer by way of any relief under any provisions of this Act, or to any refusal by the Income-tax Officer to grant relief or to an order of rectification or amendment having the effect of enhancing the assessment or reducing the refund, or to an order refusing to allow the claim made by the assessee for a rectification under Section 13 or amendment under Section 14 may appeal to the Appellate Assistant Commissioner.

(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) An appeal shall be presented within thirty days of the following date, that is to say—

(a) where the appeal relates to assessment or penalty or fine, the date of service of the notice of demand relating to the assessment of penalty or fine, or

(b) in any other case, the date on which the intimation of the order sought to be appealed against is served :

Provided that the Appellate Assistant Commissioner may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(4) The Appellate Assistant Commissioner shall hear and determine the appeal and, subject to the provisions of this Act, pass such orders as he thinks fit and such orders may include an order enhancing the assessment or penalty ;

Provided that an order enhancing assessment or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) The procedure to be adopted in the hearing and determination of the appeals shall, with any necessary modification, be in accordance with the procedure applicable in relation to income-tax.

12. Appeals to Appellate Tribunal.—(1) Any assessee aggrieved by an order passed by a Commissioner under Section 16, or an order passed by an Appellate Assistant Commissioner under any provision of this Act, may appeal to the Appellate Tribunal against such order.

(2) The Commissioner may, if he objects to any order passed by the Appellate Assistant Commissioner under any provisions of this Act, direct the Income-tax Officer to appeal to the Appellate Tribunal against the order.

(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner, as the case may be.

(4) The Income-tax Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Appellate Assistant Commissioner has been preferred under sub-section (1) or sub-section (2) by the other party may, notwithstanding that he may not have appealed against such order or any part thereof within thirty days of the receipt of the notice, file a memorandum of cross-objection, verified in the prescribed manner, against any part of the order of the Appellate Assistant Commissioner and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall except in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4), be accompanied by a fee of one hundred rupees.

(7) Subject to the provisions of this Act, in hearing and making an order on any appeal under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercise and follow in hearing and making an order on any appeal under the Income-tax Act.

13. Rectification of mistakes.—(1) With a view to rectifying any mistake apparent from the record the Commissioner, the Income-tax Officer, the

Appellate Assistant Commissioner and the Appellate Tribunal may, of his or its, own motion or an application by the assessee in this behalf, amend any order passed by him or it in any proceeding under this Act within four years of the date on which such order was passed.

(2) An amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the assessee shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(3) Where an amendment is made under this section, the order shall be passed in writing by the authority concerned.

(4) Subject to the other provisions of this Act, where any such amendment has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.

(5) Where any such amendment has the effect of enhancing the assessment or reducing the refund already made, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable.

14. Other amendment.—Where as a result of any order made under Section 154 or Section 155 of the Income-tax Act, it is necessary to recompute the chargeable profits determined in assessment under this Act, the Income-tax Officer may proceed to recompute the chargeable profits, and determine the surtax payable or refundable on the basis of such recomputation and make the necessary amendment and the provisions of Section 13 shall, so far as may be, apply thereto, the period of four years specified in sub-section (1) of that section being reckoned from the date of the order passed under the aforesaid sections of the Income-tax Act.

15. Surtax deductible in computing distributable income under income-tax Act.—Notwithstanding anything contained in clause (1) of Section 109 of the Income-tax Act, in computing the distributable income of a company for the purposes of Chapter XI-D of the Act the surtax payable by the company for any assessment year shall be deductible from the total income of the company assessable for that assessment year.

16. Revision of orders prejudicial to revenue.—(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Income-tax Officer is erroneous in so far as prejudicial to the interests of the revenue, he may after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

(2) No order shall be made under sub-section (1)—

(a) to revise an order of re-assessment made under Section 8, or

(b) after the expiry of two years from the date of the order sought to be revised.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or

direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

17. Revision of orders by Commissioner.—(1) The Commissioner either of his own motion or on application by the assessee for revision, call for the record of any proceeding under this Act which has been taken by an Income-tax Officer or Appellate Assistant Commissioner subordinate to him and may make such inquiry or cause such inquiry to be made and, subject to the provision of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.

(2) The Commissioner shall not of his own motion revise any order under this section if the order has been made more than one year previously.

(3) In the case of an application for revision under this section by the assessee, the application shall be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier :

Provided that the Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

(4) The Commissioner shall not revise any order under this section in the following case :

(a) where an appeal against the order lies to the Appellate Assistant Commissioner or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or in the case of an appeal to the Appellate Tribunal, the assessee has not waived his right of appeal ; or

(b) where the order is pending on an appeal before the Appellate Assistant Commissioner ; or

(c) where the order has been made the subject of an appeal to the Appellate Tribunal.

(5) Every application by an assessee for revision under this section shall be accompanied by a fee of twenty-five rupees.

Explanation 1.—An order by the Commissioner declining to interfere shall for the purposes of this section, be deemed not to be an order prejudicial to the assessee.

Explanation 2.—For the purposes of this section, the Appellate Assistant Commissioner shall be deemed to be an authority subordinate to the Commissioner.

18. Application of provisions of Income-tax Act.—The provisions of the following sections and Schedules of the Income-tax Act and the Income-tax (Certificate proceeding) Rules, 1962, as in force from time to time, shall apply with such modifications, if any, as may be prescribed, as if the said provisions and the rules referred to surtax instead of to income-tax :

2(44), 118, 125, 129, 130, 130A, 131, 132, 132A, 133 to 136 (both inclusive), 138, 140, 156, 160, 161, 162, 163, 166, 167, 170, 173, 175, 176, 178, 179, 220 to 229 (both inclusive) 231, 232, 233, 237 to 242 (both inclusive), 244, 245, 254 to 262 (both inclusive), 265, 266, 268, 269, 281, 283, 284, 287, 288, 288A, 288B, 289 to 293 (both inclusive), the Second Schedule and the Third Schedule :

Provided that reference in the said provisions and the rules to the "assessee" shall be construed a reference to an assessee as defined in this Act,

19. Income-tax papers to be available for the purposes of this Act.—

(1) Notwithstanding anything contained in the Income-tax Act, all information contained in any statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of that Act may be used for the purposes of this Act.

(2) All information contained in any statement or return made or furnished under the provisions of this Act or obtained or collected for the purposes of this Act may be used for purposes of the Income-tax Act.

20. Failure to deliver returns, etc.—If any person fails, without reasonable cause to furnish in due time any return under sub-section (2) of Section 5, or produce, or cause to be produced any accounts or documents required to be produced under Section 6, he shall be punishable with fine which may extend to five hundred rupees and with a further fine which may extend to ten rupees for every day during which the default continues.

21. False statements.—If a person makes in any return furnished under Section 5 any statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

22. Abetment of false returns, etc.—If a person makes or induces in any manner another person to make and deliver any account, statement or declaration relating to chargeable profits liable to surtax which is false and which he either knows to be false or does not believe to be true, he shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

23. Institution of proceedings and composition of offences.—(1) A person shall not be proceeded against for an offence under Section 20 or Section 21 or Section 22 or under the Indian Penal Code except at the instance of the Commissioner.

(2) The Commissioner may, either before or after the institution of proceedings compound any offence punishable under Section 20 or Section 21 or Section 22.

24. Power to make exemption, etc. in relation to certain Union territories.—If the Central Government considers it necessary or expedient so to do for avoiding any hardship or anomaly or removing any difficulty that may arise as a result of the application of this Act to the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry, the Central Government may, by general or special order, make an exemption, reduction in rate or other modification in respect of surtax in favour of any class of

assesseees or in regard to the whole or any part of the chargeable profits of any class of assesseees.

24A. Agreement with foreign countries.—The Central Government may enter into an agreement—

(a) with the Government of any country outside India for the granting of relief in respect of chargeable profits on which have been paid both surtax under this Act and tax a similar character or income-tax on such profits in that country or

(b) with the Government of any country outside India for the avoidance of double taxation of chargeable profits under this Act and under any law relating to the taxation of income or profits in force in that country.

25. Power to make rules.—(1) The Board may subject to the control of the Central Government, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely

- (a) the form in which returns under Section 5 may be furnished and the manner in which they be verified ;
- (b) the form in which notice for making provisional assessment shall be given ;
- (c) the form in which appeals under Section 11 or Section 12 may be filed and the manner in which they shall be verified ;
- (d) the procedure to be followed on applications for rectification of mistakes and applications for refunds ;
- (e) any other matter which by this Act is to be or may be prescribed.

(3) The Central Government shall cause every rule made under this section to be laid as soon as may be after it is made before each House of Parliament while it is a session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, that rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

26. Saving.—Nothing contained in this Act shall apply to any company which has no share capital.

THE FIRST SCHEDULE

[See Section 2 (5)]

Rules for computing the chargeable profits.

In computing the chargeable profits of a previous year, total income computed for that year under the Income-tax Act shall be adjusted as follows :

1. Income, profits and gains and other sums falling within the following clauses shall be excluded from such total income, namely—

- (i) any income chargeable under the Income-tax Act under the head "Capital gains";
- (ii) any compensation or other payment as referred to in clause (ii) of Section 28 of the Income-tax Act;
- (iii) Profits and gains of any business of life insurance;
- (iv) any income referred to in sub-section (2) of Section 41 of the Income-tax Act;
- (v) the amount of profits and gains derived from an industrial undertaking or hotel, on which under Section 84 of the Income-tax Act, income-tax is not payable;
- (vi) income chargeable under the Income-tax Act under the head "Interest on securities" derived from any security of the Central Government issued or declared to be income-tax free or from any security of a State Government issued income tax free, the income-tax whereon is payable by the State Government;
- (vii) any sum in respect of which a deduction of income-tax is allowed under provisions of Section 88 of the Income-tax Act;
- (viii) income by way of dividends from an Indian company or a company which has made the prescribed arrangement for the declaration and payment of dividends within India;
- (ix) income by way of royalties received from Government or a local authority or any Indian concern;
- (x) in the case of a non-resident company which has not made the prescribed arrangements for the declaration and payment of dividends within India, its income by way of any interest or fees for rendering technical services received from the Government or a local authority or any Indian concern;
- (xi) in the case of a banking company—

(a) any sum which during the previous year is transferred by it to a reserve fund under sub-section (1) of Section 17 of the Banking Companies Act, 1949 or is deposited by it with the Reserve Bank of India under sub-clause (ii) of clause (b) of sub-section (2) of Section 11 of that Act, not exceeding the amount required under the aforesaid provisions to be so transferred or deposited as the case may be, or

(b) any sum transferred by it during the previous year to any reserves in India including reserves not shown as such in its published balance-sheet in so far as the sums transferred to such reserves are attributable to income chargeable to tax under the Income-tax Act and have not been allowed as a deduction in computing its total income under that Act in so far as the aggregate of such sums does not exceed the highest of the aggregate of such sums, if any, so transferred during any one of the three years prior to the previous year,

whichever is higher;

- (xii) the amount of any deduction from the income-tax chargeable on the total income allowed under the annual Finance Act in connection with export of any goods or merchandise out of India or the

sale by a manufacturer of any articles to any person who exports them out of India.

2. The balance of the total income arrived at after making the exclusions mentioned in rule 1 shall be reduced by—

(i) the amount of income-tax payable by the company in respect of its total income under the provisions of the Income-tax Act after making allowance for any relief, rebate or deduction in respect of income-tax to which the company may be entitled, under the provisions of the said Act or the annual Finance Act, and after excluding from such amount—

(a) the amount of income-tax, if any, payable by the company in respect of any income referred to in clause (i) or clause (ii) or clause (iii) or clause (viii) of rule 1 included in the total income ;

(b) the amount of income-tax, if any, payable by the company under the provisions of the annual Finance Act with reference to the relevant amount of distributions of dividends by it.

Explanation.—In this sub-clause, the expression “the relevant amount of distributions of dividends” has the meaning assigned to it in the Finance Act of the relevant year.

(ii) in the case of a company which has been charged to tax in a country outside India on any portion of its income, profits and gains included in its total income as computed under the Income-tax Act, the tax actually paid in respect of such income, profits and gains in the said country in accordance with the laws in force in that country after allowance of every relief due under the said laws :

Provided that the aforesaid reduction shall not be allowed unless the assessee produces evidence of the fact of the payment of the aforesaid tax in that country.

(c) the amount of income-tax, if any, payable by the company under Section 104 of the Income-tax Act.

Explanation.—In relation to the assessment year commencing on the 1st day of April, 1964, the reference in this sub-clause to “income-tax” shall be construed as a reference to super-tax.

3. The net amount of income calculated in accordance with rule 2 shall be increased by the aggregate of—

(i) the amount of any interest payable by the company in respect of its debentures or moneys referred to in clause (v) of rule 1 of the Second Schedule for the previous year relevant to the assessment year allowed as a deduction in computing its total income ;

(ii) any expenditure incurred on account of commission, entertainment and advertisement, to the extent such expenditure, in the opinion of the Income-tax Officer, is excessive having regard to the circumstances of the case .

Provided that the previous authority of the Inspecting Assistant Commissioner is obtained for holding such expenditure to be excessive.

THE SECOND SCHEDULE

[See Section 2 (8)]

Rules for computing the capital of a company for the purpose of surtax.

1. Subject to the other provisions contained in this Schedule the capital of a company shall be the aggregate of the amounts, as on the first day of the previous year relevant to the assessment year, of—

- (i) its paid-up share capital ;
- (ii) its reserves, if any, created under the proviso (b) to clause (vib) of sub-section (2) of Section 10 of the Indian Income-tax Act, 1922 or under sub-section (3) of Section 34 of the Income-tax Act, 1961 ;
- (iii) its other reserves as reduced by the amounts credited to such reserves as have been allowed as a deduction in computing the income of the company for the purposes of the Indian Income-tax Act, 1922 or the Income-tax Act, 1961 ;
- (iv) its debentures, if any ; and
- (v) any moneys borrowed by it from Government or the Industrial Finance Corporation of India or the Industrial Credit and Investment Corporation of India or any other financial institution which the Central Government may notify in this behalf in the Official Gazette or any banking institution (not being a financial institution as aforesaid) or any person in a country outside India :

Provided that such moneys are borrowed for the creation of a capital asset in India and the agreement under which such moneys are borrowed provides for the repayment thereof during a period of not less than seven years.

Explanation.—For the removal of doubts it is hereby declared that any amount standing to the credit of any account in the books of a company as on the first day of the previous year relevant to the assessment year which is of the nature of item (5) or item (6) or item (7) under the heading “RESERVE AND SURPLUS” or of any item under the heading “CURRENT LIABILITIES AND PROVISIONS” in the columns relating to “LIABILITIES” in the “FORM OF BALANCE SHEET” given in Part I of Schedule VI to the Companies Act, 1956 (1 of 1956), shall not be regarded as a reserve for the purposes of computation of the capital of a company under the provisions of this Schedule.

2. Where a company owns any assets the income from which in accordance with clause (iii) or clause (vi) or clause (viii) of rule 2 of the First Schedule is required to be excluded from its total income in computing its chargeable profits the amount of its capital as computed under rule 1 of this Schedule shall be diminished by the cost to it of the said assets as on the first day of the previous year relevant to the assessment year in so far as such cost exceeds the aggregate of—

- (i) any moneys borrowed [other than the debentures referred to in clause (iv) or moneys referred to in clause (v) of rule 1] and remaining outstanding as on the first day of the said previous year : and

(ii) the amount of any fund, any surplus and any such reserve as is not to be taken into account in computing the capital under rule 1.

Explanation 1.—A paid-up share capital or reserve brought into existence by creating or increasing (by revaluation or otherwise) any book asset is not capital for computing the capital of a company for the purpose of this Act.

Explanation 2.—Any premium received in cash by the company on the issue of its share standing to the credit of the share premium account shall be regarded as forming part of its paid-up share capital.

Explanation 3.—Where a company has different previous years in respect of its income, profits and gains, the computation of capital under rules 1, 2 and 3 shall be made with reference to the previous year which commenced first

3 Where after the first day of the previous year relevant to the assessment year the capital of a company as computed in accordance with the foregoing rules of this Schedule is increased by any amount during that previous year on account of increase of paid-up share capital or issue of debentures or borrowing of any moneys referred to in clause (v) of rule 1 or is reduced by any amount on account of reduction of paid-up share capital or redemption of any debentures or repayment of any such moneys, such capital shall be increased or reduced as the case may be, by a sum which bears to that amount the same proportion as the number of days of the previous years during which the increase or the reduction remained effective bear to the total number of days in that previous year

4 Where a part of the income, profits and gains of a company is not includible in its total income as computed under the Income tax Act its capital shall be the sum ascertained in accordance with rules 1, 2 and 3, diminished by an amount which bears to that sum the same proportion as the amount of the aforesaid income, profits and gains bears to the total amount of its income, profits and gains.

THE THIRD SCHEDULE

(See Section 4)

RATES OF SURTAX

On the amount by which the chargeable profits exceed the amount of the statutory deduction—25 per cent :

